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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~852~~ 62

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANT,

vs.

THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. GARNER, MARY J. GRAEFFE, AND WILLIAM H. BOWEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 19, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 352.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANT,

vs.

THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. GARNER, MARY J. GRAEFFE, AND WILLIAM H. BOWEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 To the honorable the judges of the circuit court of the United States for the southern district of New York:

The Fourth National Bank of the City of New York, a banking association established at said city, in the southern district of New York, under the laws of the United States providing for national banking associations, the complainant herein, brings this its bill of complaint against the American Mills Company of the City and State of New York and a citizen of said State; Albert J. Graeffe, of the city and State of New York and a citizen of said State; William H. Garner, of the city and State of New York and a citizen of said State; Mary J. Graeffe, of the city and State of New York and a citizen of said State, and William H. Bowen, of the city and State of New York and a citizen of said State, and thereupon your orator complains and says that—

Your orator is a corporation duly created and organized under an act of Congress passed February 25, 1863, entitled "An act to provide a national currency secured by a pledge of United States stocks and to provide for the circulation and redemption thereof," and the several acts amendatory thereof, and is established at the city of New York, in the southern district of New York, being the district in which your honorable court is held. The defendant, The American Mills Company, is a corporation created and organized under the laws of the State of New York and at all the times herein named, transacting its general business and having its principal office located at the city and county of New York, within said State, and a resident of said city and county.

2 At various times between October 24, 1880, and January 4, 1881, the defendant, The American Mills Company, drew its seven certain drafts or bills of exchange, whereby it required the defendant, Albert J. Graeffe, to pay to its own order certain sums, amounting in the aggregate to the sum of twenty thousand five hundred dollars. The said defendant, Albert J. Graeffe, duly accepted said drafts or bills of exchange, and before maturity the same were duly endorsed and came into the hands of your orator for value.

On or about March 3, 1881, your orator began an action by personal service of summons in the supreme court of the State of New York for the city and county of New York against the defendants, The American Mills Company and Albert J. Graeffe, upon one of the said acceptances for the sum of two thousand five hundred dollars. Such proceedings were thereafter had in such action that on or about March 30, 1881, judgment was duly entered and docketed therein in favor of your orator and against the defendants, The American Mills Company and Albert J. Graeffe, for two thousand five hundred and thirty-three dollars and eighty-four cents, damages and costs.

On or about May 31, 1881, your orator began an action by personal service of summons in the court of common pleas for the city and county of New York, in the State of New York, against the defendants, The American Mills Company and Albert J. Graeffe,

upon the remainder of said acceptances for the sum of eighteen thousand dollars, and such proceedings were thereafter had in such action that on or about June 22, 1881, judgment was duly entered therein in favor of your orator and against the defendants, The American Mills Company and Albert J. Graeffe, for eighteen thousand two hundred and twenty-four dollars, damages and costs. Upon the same day a transcript of said judgment was duly filed and said judgment was duly docketed in the office of the clerk of the city and county of New York.

After the said judgments were so entered and docketed an execution in the usual form upon each of the same were duly issued to the sheriff of the city and county of New York. The said county was the one where the defendant, Albert J. Graeffe, then re-
3 sided and where the defendant, The American Mills Company, was then transacting its general business and had its principal office located and of which said company was then a resident. The said executions were directed to the said sheriff of the city and county of New York, and by them the said sheriff was commanded to satisfy the said judgments out of the personal property of the said Albert J. Graeffe and the American Mills Company or either of them, and if sufficient personal property could not be found, then out of the real property of the said Albert J. Graeffe and the American Mills Company or either of them belonging to either of them on the day when the judgment was docketed in said city and county of New York or at any time afterward. The said executions were before the delivery thereof duly endorsed, with a direction to said sheriff to levy for the amounts of said judgments, with interest from the date of entry.

The said sheriff has duly made return of said executions to the officers with whom the judgment-rolls in said actions were filed that said defendants or either of them had no goods or chattels, lands, tenements, or real estate within the county whereon to levy and satisfy the said executions or any part thereof, and there is now actually due and unpaid upon said judgments twenty thousand seven hundred and fifty-seven dollars and eighty-four cents, with interest from the dates of entry thereof. The said defendants, The American Mills Company and Albert J. Graeffe, as your orator is informed and believes, then had no property in any other county of the State of New York or of the southern district of New York.

For a considerable time prior to and during the month of February, 1881, as your orator is informed and believes, the defendant, The American Mills Company, was in the habit of consigning and did consign to the defendant, Albert J. Graeffe, goods, wares, and merchandise, consisting of manufactures of wool and other dry goods, being the product of the manufactory of said company, at Warwick, Rhode Island, and said defendant, Albert J. Graeffe,
4 was receiving and did receive goods so consigned. Such consignments were made and received upon the agreement between the defendant company and the defendant, Albert J. Graeffe, that the same should be sold on commission by said defendant Graeffe for and on account of the defendant company and that he

should account to the defendant company for the proceeds thereof. This was the uniform custom and agreement with regard to such consignments.

At different times prior to about February 26, 1881, as your orator is informed and believes, the defendant company had so consigned to the defendant, Albert J. Graeffe, various lots of such goods, wares, and merchandise, which were then remaining unsold and in possession of said defendant Graeffe. The said goods, wares, and merchandise of the defendant company so in possession at that time of the defendant, Albert J. Graeffe, as consignee, were, as your orator is informed and believes, of the value of fifty thousand dollars, and were reasonably worth that sum.

During the month of February, 1881, as your orator is informed and believes, the defendant, Albert J. Graeffe, became embarrassed in business and found himself in failing circumstances. He thereupon, as your orator is informed and believes, conceived the scheme of transferring all his property to his wife, the defendant, Mary J. Graeffe, and of thus placing the same beyond the reach of his creditors. In accordance with such scheme, as your orator is informed and believes, he transferred to the defendant, Mary J. Graeffe, all his household furniture to the value of about $10,000 and certain valuable real estate situated at Warwick, Rhode Island, upon which he had expended large sums of money and which was reasonably worth, as your orator is informed and believes, the sum of $50,000. Your orator is informed and believes that such transfers and that hereinafter set forth were made upon the pretense that the defendant, Albert J. Graeffe, was indebted to the said Mary J. Graeffe in large sums of money, but if in fact there was any such indebtedness it was very much less in amount, as your orator is informed and believes, than the value of the property so transferred.

5 In further fulfillment of such scheme, as your orator is informed and believes, the defendant, Albert J. Graeffe, on or about February 28, 1881, made certain entries in his books of account purporting to constitute a sale of the goods, wares, and merchandise of the defendant, The American Mills Company, so in his possession, as above set forth, to himself, for the sum of about forty-six thousand dollars. The said defendant, Albert J. Graeffe, neither then nor at any time since paid any consideration whatsoever to the defendant, The American Mills Company, for the said goods, wares, and merchandise. Your orator avers and charges that he had no authority to make such pretended transfer, and that it was entirely unlawful for the said defendant, Albert J. Graeffe, who was acting as agent for the defendant company, to transfer its goods to himself. Your orator is informed and believes that the said defendant, Albert J. Graeffe, claimed that the consideration for such pretended transfer was an indebtedness to said Graeffe by the defendant company by reason of moneys loaned and advances made by said Graeffe to said company upon the said goods; but, as your orator is informed and believes, no such loans or advances had in fact been made, and the defendant company was not indebted to the defendant, Albert J. Graeffe, in any sum whatsoever, but, on the contrary, said Graeffe was indebted to said company.

In further pursuance of the aforesaid scheme, as your orator is informed and believes, the defendant, Albert J. Graeffe, on or about March 1, 1881, made certain other entries in his books of account purporting to constitute a sale of said goods, wares, and merchandise of the defendant company then in his possession, as above set forth, and being of the value of about fifty thousand dollars, from himself, the said Albert J. Graeffe, as owner, to the defendant, William H. Garner, and, as your orator is informed and believes, thereafter, but at what precise time your orator is not informed, delivered the said goods, wares, and merchandise to the defendant Garner
6 and placed him in possession and control thereof. The defendant Garner paid no consideration or value whatsoever therefor, and, as your orator is informed and believes, received the same with full knowledge of the manner in which they had come into the hands of the defendant, Albert J. Graeffe, and that the same were in fact the property of the defendant company. The said defendant Garner, as your orator is informed and believes, claimed that he had received the same on behalf of the defendant, Mary J. Graeffe, and that the said goods, wares, and merchandise had been delivered to him by the defendant, Albert J. Graeffe, upon account and in part payment of an indebtedness alleged, as above set forth, to be due from the defendant, Albert J. Graeffe, to the defendant, Mary J. Graeffe; but, as your orator is informed and believes, such indebtedness, if any, had been extinguished and paid by the transfers of real estate and household furniture above set forth. There has never been any pretence, as your orator is informed and believes, by any of the defendants herein that the defendant company was ever indebted to the defendant, Mary J. Graeffe, in any amount or that there was any consideration or foundation whatsoever other than that herein stated for the delivery of said goods, wares, and merchandise to the defendant Garner; and your orator avers and charges that an indebtedness of the defendant, Albert J. Graeffe, to the defendant, Mary J. Graeffe, if any such in fact existed, constituted no consideration for the appropriation by the defendant, Albert J. Graeffe, or the defendant, William H. Garner, of the goods of the defendant, The American Mills Company.

Thereafter, as your orator is informed and believes, the defendant Garner employed the defendant, William H. Bowen, to sell the said goods, wares, and merchandise, and the said defendant Bowen did so sell large portions thereof through the South and West to parties to your orator unknown. The said defendant Garner, as your orator is informed and believes, thereupon shipped the goods, wares, and merchandise so sold to the said purchasers, and thus removed the same from the jurisdiction of this court and dispersed the same
7 to various different places. The defendants, Garner and Bowen, as your orator is informed and believes, have collected considerable sums of money for and on account of the goods, wares, and merchandise so sold from the purchasers thereof, but whether they have collected the purchase price from all the purchasers thereof your orator is not informed. The said defendants, Garner and Bowen, as your orator is informed and believes, have paid over a considerable portion of the sums so collected to the defendant, Mary

J. Graeffe, but whether they have paid over all of the sums so collected to the said defendant, Mary J. Graeffe, your orator is not informed. The said defendant, Mary J. Graeffe, as your orator is informed and believes, has never paid any consideration or value whatsoever for the said goods, wares, and merchandise or for such portion of the proceeds thereof, if any, as may have been received by her. The said defendant, Mary J. Graeffe, received the same with full knowledge that the said goods, wares, and merchandise were the property of the defendant company and of all the facts above set forth with reference thereto, but she nevertheless has appropriated to her own use such portions of said goods, wares, and merchandise or of the proceeds thereof as have come into her hands. The said defendants and each and all of them entirely neglect and refuse to pay over or surrender to your orator or to apply to the satisfaction of its judgments aforesaid either the said goods, wares, and merchandise or the value thereof in money or the proceeds arising from the sale thereof. By reason of such disposition of the aforesaid goods, wares, and merchandise of the defendant, The American Mills Company, the same have been removed from the reach of any execution at law, and your orator's said judgments remain entirely unpaid.

All of which acts and doings of said defendants have been and are contrary to equity and good conscience and to your orator's legal and equitable rights in the premises aforesaid. By means of such wrongful acts and doings your orator is subjected to
8 great damage and irreparable loss and injury, inasmuch as the said goods, wares, and merchandise and any and all proceeds thereof, in whosesoever hands the same may be, are justly and properly subject to the lien of your orator's said judgments, and your orator is legally and equitably entitled to have the same applied in payment and satisfaction of its said judgments.

In consideration whereof and forasmuch as your orator can have no adequate relief except in this court, your orator prays that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, your orator, however, hereby expressly waiving answer to this bill of complaint under oath.

Your orator further prays the aid of this court in the premises and that it may be adjudged and decreed that the aforesaid pretended transfers or sales of the said goods, wares, and merchandise of the defendant company by the defendant, Albert J. Graeffe, to himself and then to the defendant Garner or the defendant, Mary J. Graeffe, are null and void and of no effect; that the said goods, wares, and merchandise and any proceeds of any sales thereof are the property of the defendant company and subject to the lien of your orator's judgments aforesaid.

And that an account may be taken of the said goods, wares, and merchandise and of any and all proceeds thereof received by any of the defendants, and the defendants and each of them be ordered and adjudged to surrender and pay over the said goods, wares, and merchandise or any proceeds thereof found to be in their hands to your orator or to a receiver, to be applied in satisfaction of your

orator's judgments aforesaid, and that if the defendants fail to surrender or pay over the same or if the amount and value of such proceeds and goods, wares, and merchandise so surrendered and paid over is less than the value of the goods, wares, and merchandise of the defendant company originally delivered to the defendant Garner, as above set forth, with interest, that the defendants, Albert J. Graeffe, William H. Garner, and Mary J. Graeffe, may be
9 adjudged and decreed to pay to your orator in satisfaction of its said judgments the balance necessary to make up the amount of the value of such goods, wares, and merchandise so originally delivered to said defendant Garner.

And also that a provisional or preliminary injunction may issue herein to restrain the defendants and each and every one of them from disposing of or in any manner dealing with any of the aforesaid goods, wares, and merchandise, the property of the defendant company, remaining in their hands, and also from paying out or disposing of any of the proceeds thereof in their hands, save as hereby prayed, until the further order of this court; and also that a receiver may be appointed by this court, with the usual powers of receivers in such cases, to collect, receive, and hold during the pendency of this suit and until the further order of this court any of the said goods, wares, and merchandise and any proceeds thereof now in the hands or under the control of the defendants or either of them, or any sums due from any person or persons whatsoever upon account or by reason of the purchase of any of said goods, wares, and merchandise, and that the defendants and each of them may be ordered to surrender and pay over to the said receiver any such goods, wares, and merchandise, or proceeds thereof, or accounts, or evidences of debt, or choses in action therefor, in their hands or under their control.

And also that a temporary restraining order may be made to restrain the defendants and each of them in like manner until the decision of the court upon your orator's motions for said preliminary injunction and receiver as aforesaid, and that your orator may have such other and further relief as this honorable court shall think meet and as shall be comformable to equity.

May it please your honors to grant unto your orator the writ of subpœna, issued out of and under the seal of this honorable court, directed to said defendants, the aforesaid American Mills Company, Albert J. Graeffe, William H. Garner, Mary J. Graeffe, and William H. Bowen, and each of them, commanding them and
10 each of them, by a certain day and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide by such order and decree as may be made against them therein; and your orator will ever pray, etc.

THE FOURTH NATIONAL BANK,
[L. S.] By OCTAVIUS D. BALDWIN,
Vice-President.

BRISTOW, PEET & OPDYKE,
Solicitors for Complainant and of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

O. D. Baldwin, being duly sworn, deposeth and saith that he is the vice-president of The Fourth National Bank, the complainant in the foregoing bill named, and has read the same and knows the contents thereof; that the said bill is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes the same to be true.

O. D. BALDWIN.

Sworn to before me this third day of December, 1881.

EDWARD B. WHITNEY,
[L. S.] *Notary Public, N. Y. Co.*

(Endorsed:(U. S. circuit court. The Fourth National Bank, plaintiff, against The American Mills Company, Albert J. Graeffe, William H. Garner, Mary J. Graeffe, and William H. Brown, defendants. Bill of complaint. Bristow, Peet & Opdyke, attorneys for pl'ff, No. 20 Nassau street, N. Y. city. U. S. circuit court. Filed Dec. 3, 1881. Joseph M. Deuel, clerk.

11 Circuit Court of the United States, Southern District of New York.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK
v.
WILLIAM H. GARNER, Impl'd, &c., with ALBERT J. GRAEFFE and Others.

SIR: Please enter our appearance as the attorneys for the defendant, William H. Garner, in the above-entitled action.

Dated New York, December 17th, 1881.

BAGLEY & THAIN,
Att'ys for said Def't.

Office and P. O. address: No. 8 Wall St., N. Y. city.

To J. M. Duell, Esq., clerk U. S. circuit court.

(Endorsed:) U. S. circuit court. The Fourth National Bank
12 *vs.* William H. Garner *et al.* Notice of appearance. Bagley & Thain, att'ys for def't, 8 Wall St., N. Y. To J. M. Duell, Esq., clerk U. S. circuit court. U. S. circuit court. Filed Dec. 20th, 1881. Timothy Griffith, clerk.

13 Circuit Court of the United States for the Southern District of New York.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK
vs.
MARY J. GRAEFFE, Impleaded with THE AMERICAN MILLS COMPANY and Others.

SIR: Please enter our appearance as the attorneys for the defendant, Mary J. Graeffe, in the above-entitled action.

Dated New York, December 31st, 1881.

BAGLEY & THAIN,
Att'ys for said Def't.

Office & P. O. address: No. 8 Wall street, New York city.

To J. M. Duell, Esq., clerk U. S. circuit court.

14 (Endorsed:) U. S. circuit court. The Fourth National Bank, &c., *vs.* Mary J. Graeffe, impleaded, &c. Notice of appearance. Bagley & Thain, att'ys for said def't, 8 Wall St., N. Y. To J. M. Duell, Esq., clerk U. S. circuit court. U. S. circuit court. Filed Dec. 31, 1881. Joseph M. Deuel, clerk.

15 United States Circuit Court, Southern District of New York. In Equity.

THE FOURTH NATIONAL BANK OF THE CITY OF N. Y.
vs.
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, *et al.*

The clerk of the above-named court will please enter my appearance as solicitor for The American Mills Company, Albert J. Graeffe, and William H. Bowen, defendants in the above-entitled suit.

FRANCIS C. REED,
346 *Broadway, N. Y. City.*

(Endorsed:) U. S. circuit court, southern dist. N. Y. In equity.
16 The Fourth Nat. B'k of the City of N. Y. *vs.* The American Mills Co. *et al.* Appearance. F. C. Reed, att'y for certain def't-, 346 Broadway, N. Y. city. U. S. circuit court. Filed Dec. 31st, 1881. Joseph M. Deuel, clerk.

17 In the Circuit Court of the United States, Second Circuit, Southern District of N. Y. In Equity.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,
against
ALBERT J. GRAEFFE and WILLIAM H. BOWEN and THE AMERICAN Mills Company, Impleaded with William H. Garner and Mary J. Graeffe, Defendants.

The joint and several answer of Albert J. Graffe and William H. Bowen and The American Mills Company, three of the defend-

ants, to the bill of complaint of The Fourth National Bank of the City of New York, complainant.

The defendants, now and at all times hereinafter, saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much or such parts thereof as these defendants are advised is or are material for them or any of them to make answer unto, they, these defendants, severally answering, say they have been informed and believe the complainant is a corporation duly created and organized under an act of Congress passed February 25th, 1863, entitled An act to provide a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, and the several acts amendatory thereof, and is
18 established at the city of New York, in the southern district of New York, being the district in which this court is held.

And these defendants, further answering, say they have been informed and believe the defendant, The American Mills Company, is a corporation created and organized under the laws of the State of New York, and at all the times named in said bill of complaint transacting its general business and having its principal office located at the city and county of New York within said city, and a resident of said city and county.

And these defendants, further answering, say they have been informed and believe it to be true that at various times between October 24th, 1880, and January 4th, 1881, the defendant, The American Mills Company, drew its seven certain drafts or bills of exchange, whereby it required the defendant, Albert J. Graeffe, to pay to its own order certain sums, amounting in the aggregate to the sum of twenty thousand five hundred dollars.

That the said defendant, Albert J. Graeffe, duly accepted said drafts or bills of exchange and before maturity the same were duly endorsed and came into the hands of the complainant for value.

And these defendants, further answering, say they have been informed and believe it to be true that on or about March 3d, 1881, the complainant began an action by personal service of a summons in the supreme court of New York for the city and county of New York against these defendants, The American Mills Company and Albert J. Graeffe, upon one of the said acceptances for the sum of twenty-five hundred dollars. Such proceedings were thereupon had in such action that on or about March 30, 1881, judgment was duly entered and docketed thereon in favor of the complainant and against the defendants, The American Mills Co. and Albert J. Graffe, for twenty-five hundred and thirty-three $\frac{44}{100}$ dollars, damages and costs, and also that on or about May 31st, 1881, the complainant began an action by personal service of the summons in the court of common pleas of the city
19 and county of New York, in the city of New York, against the defendants, The American Mills Co. and Albert J. Graeffe,

upon the remainder of said acceptances for the sum of eighteen thousand dollars, and such proceedings were thereafter had in such action that on or about June 22, 1881, judgment was duly entered therein in favor of the complainant and against the defendants, The American Mills Co. and Albert J. Graffe, for eighteen thousand two hundred and twenty-four dollars, damages and costs, and that upon the same day a transcript of said judgment was duly filed and said judgment was duly docketed in the office of the clerk of the city and county of New York, and also that after the said judgments were so entered and docketed an execution in the usual form upon each of the same was duly issued to the sheriff of the city and county of New York; that the said county was the one where the defendant, Albert J. Graeffe, then resided, and where the defendant, The American Mills Company, was then transacting its general business and had its princial office located and of which said corporation was then a resident; that the said executions were directed to the said sheriff of the city and county of New York, and by them the said sheriff was commanded to satisfy the said judgments out of the personal property of the said Albert J. Graeffe and the American Mills Co. or either of them, and, if sufficient personal property could not be found, then out of the real property of the said Albert J. Graeffe and the American Mills Co. or either of them belonging to either of them on the day when the judgment was docketed in said city and county of New York or at any time afterwards.

Also that the said executions were before the delivery thereof duly endorsed, with the direction to said sheriff to levy for the amount of said judgment, with interest from the date of entry.

Also that said sheriff has duly made return of said executions to the officer with whom the judgment-rolls in said action were filed that the said defendants or either of them had no goods or chattels, land, tenements, or real estate within the county whereon to levy and satisfy said execution or any part thereof.

And these defendants, further answering, say they have been informed and believe it to be true that there is now actually due and unpaid upon said judgment twenty thousand seven hundred and fifty-seven $\frac{84}{100}$ dollars, with interest from the dates of entry thereof; but these defendants further say with reference to said judgments and executions, endorsements, and return thereof, as well as of the filing of the transcripts thereof, that for greater certainty they crave leave to refer to the said judgment-rolls and the dockets thereof and entry, and to the said execution and to the returns thereon when the same shall be produced.

And these defendants, further answering, say they have been informed and believe it to be true that the said defendants, The American Mills Co. and Albert J. Graeffe, had no property in any other county of the State of New York or of the southern district of New York; and these defendants, further answering, say they have been informed and believe it to be true that for considerable time prior to and during the month of February, 1881, the defendant, The American Mills Co., was in the habit of consigning and did

consign to the defendant, Albert J. Graeffe, goods, wares, and merchandise, consisting of manufactures of wool and other dry goods, being the produce of the manufactory of said company at Warwick, Rhode Island, and said defendant, Albert J. Graeffe, was receiving and did receive goods so consigned, and that such consignments were made and received upon the agreement between the defendant company and the defendant, Albert J. Graeffe, that the same should be sold on commission by the said defendant, Albert J. Graeffe, for and on account of the defendant company, and that he, said Albert, should account to the defendant company — the proceeds thereof; but these defendants deny that this was the uniform custom or agreement with regard to such consignments.

21 And these defendants, further answering, say they have been informed and believe it to be true that at different times prior to about February 26, 1881, the defendant company had so consigned to the defendant, Albert J. Graeffe, various lots of such goods, wares, and merchandise, portions of which only were then remaining unsold in possession of said Graeffe, and that the said goods, wares, and merchandise of the defendant company so in possession at that time of the defendant, Albert J. Graeffe, as consignee, were of the value, as these defendants are informed and believe, of, to wit, the sum of thirty-five thousand dollars, and are reasonably worth that sum, but these defendants deny that the same were of the value of fifty thousand dollars or were reasonably worth that sum of fifty thousand dollars.

And these defendants, further answering, say they are informed and believe it to be true that about the month of February, 1881, the defendant, Albert J. Graeffe, became embarrassed in business and found himself in failing circumstances; but these defendants, further answering, deny that he thereupon or at any time conceived the scheme of transferring all or any part of his property to his wife, the defendant, Mary J. Graeffe, and of thus placing the same beyond the reach of his creditors.

These defendants, further answering, deny that, in accordance with such alleged scheme, the defendant, Albert J. Graeffe, transferred to the defendant, Mary J. Graeffe, all or any part of his household furniture to the value of about ten thousand dollars or of any other value or amount or certain valuable real estate situate in Warwick, Rhode Island, or elsewhere, or any real estate upon which he had expended a large sum or sums of money, or any sums, or which were reasonably worth the sum of fifty thousand dollars. On the contrary, these defendants, further answering, allege the fact to be that this defendant, Albert J. Graeffe, did, on or about the first day of March, 1881, for a good and valuable consideration, sell, transfer, and deliver to the defendant, Mary J. Graeffe, through the defendant, William H. Garner, as trustee, for that purpose,

22 household furniture of the value of about ten thousand dollars and certain valuable real estate situate at Warwick, Rhode Island, upon which he had expended large sums of money and which was reasonably worth the sum of about fifty thousand dollars, and that said transfer and conveyance was in good faith.

And these defendants, further answering, deny that such transfers or either of them or any of those set forth in the said bill were made upon any pretense whatever, but they allege that in fact such transfers were made in consideration of the extinguishment by the said Mary J. Graeffe of a portion of an indebtedness to her from the said defendant, Albert J. Graeffe, of large sums of money.

And they also allege that in fact there was such indebtedness and that it was for an amount exceeding the sum for which said property was sold and transferred, and that the amount of indebtedness so canceled in consideration of said transfer was then agreed, and was in fact the reasonable value of the property so transferred.

These defendants, further answering, deny that such indebtedness was for much less in amount or any less in amount than the value of the property so transferred, but that in fact the said indebtedness greatly exceeded the value of the property so transferred.

These defendants, further answering, deny that in the fulfillment of such scheme as alleged in said bill of complaint the defendant, Albert J. Graeffe, on or about Feb'y 28th, 1881, or at any time, made certain entries in his books of account purporting to constitute the sale of the goods, wares, and merchandise of the American Mills Company so in his possession, as above set forth, to himself for the sum of about forty-six thousand dollars or for any sum.

These defendants, further answering, say they have been informed and believe it to be true that said Albert J. Graeffe, defendant, did, on or about the 28th day of February, 1881, make certain entries in his books of account of a sale which in fact took place of certain of the goods, wares, and merchandise theretofore consigned
23 to the defendant, Albert J. Graeffe, by the American Mills Co., and in possession of said Albert J. Graeffe, to himself for the sum of about forty-six thousand dollars.

And these defendants allege that the said entries were a record of an actual good-faith purchase of the said goods from the said American Mills Company by the said defendant, Albert J. Graeffe; and these defendants, further answering, deny the allegation in the said complainant's bill that this defendant, Albert J. Graeffe, didn't then or at any time since pay any consideration whatever to the said defendant.

And these defendants, upon their information and belief, allege that the said Albert J. Graeffe paid to the said American Mills Co. a full and valuable consideration for said goods, wares, and merchandise.

And these defendants, further answering, deny that said Albert J. Graeffe had no authority to make such transfer, and also deny that it was unlawful for the said Albert J. Graeffe to transfer the said goods to himself, and aver that said goods were then in his hands as commission merchant; that he had made advances thereon and had authority to sell the same for his own account.

These defendants, further answering, say they have been informed and believe it to be true that the said Albert J. Graeffe claimed that the consideration for such transfer of said goods, wares, and merchandise was an indebtedness by said defendant company to said

Graeffe by reason of moneys loaned and advances made by said Graeffe to said company upon the said goods, and also for the acceptances made by him, the said defendant, Albert J. Graeffe, to the said company upon the faith and credit of said goods; and these defendants, upon information and belief, aver that such advances and loans had theretofore been so made by the said Graeffe to the said company defendant, and that said company defendant was indebted to said Graeffe on account therefor at the time of said transfer.

And these defendants, further answering, deny that no such
24 loans or advances had in fact been made, and also deny that the defendant company was not indebted to this defendant, Albert J. Graeffe, in any sum whatsoever; and these defendants also deny that, on the contrary, said Albert J. Graeffe was indebted to said company.

And these defendants, further answering, deny that this defendant, Albert J. Graeffe, on or about March 1st, 1881, or at any time, made certain entries in his books of account purporting to constitute the sale of said goods, wares, and merchandise of the defendant company then in his possession, as alleged in said bill, or any value as therein alleged from himself, the said Albert J. Graeffe, as owner, to the defendant, William H. Garner. On the contrary, these defendants allege that the other entries referred to in said complainant's bill upon this subject were a record of the transactions of sale made by this defendant, Albert J. Graeffe, to the said William H. Garner of the said goods, wares, and merchandise on or about the first day of March, 1881, in good faith and for a valuable consideration, and which were in fact of the value of about thirty-five thousand dollars, and that the said goods, wares, and merchandise were transferred and delivered by this defendant, Albert J. Graeffe, to the said William H. Garner, pursuant thereto at that time, and that this defendant, Albert J. Graeffe, received payment of the full value of the said goods from the said William H. Garner, as trustee and agent for the defendant, Mary J. Graeffe, for whom the said William H. Garner purchased and paid for said goods.

These defendants, further answering, say they are informed and believe it to be true theretofore and, to wit, on the 1st day of March, 1881, this defendant, Albert J. Graeffe, delivered the said goods, wares, and merchandise to the defendant, William H. Garner, and placed him in possession and control thereof. These defendants, further answering, deny that the said defendant, William H. Garner, paid no consideration or value therefor; and also deny that the said Garner received the said goods with full knowledge or with any knowledge of the manner in which
they had come into the hands of the defendant, Albert
25 J. Graeffe, or with knowledge that the same were, in fact, the property of the defendant company at the time of said sale by said Albert J. Graeffe to said William H. Garner; that said William H. Garner, in fact, purchased said goods upon knowledge and information communicated to him that the said goods had been purchased by the said Albert J. Graeffe, defendant, of the said

American Mills Co., and had paid therefor the value thereof and was the absolute and sole owner thereof, and had an absolute right and authority to sell, transfer, and deliver the same as the individual property of him, the said Albert J. Graeffe.

These defendants, further answering, say that they have been informed and believe it to be true that the said defendant, William H. Garner, claimed that he had received the said goods in behalf of the defendant, Mary J. Graeffe, and that said goods, wares, and merchandise had been delivered to him by the defendant, Albert J. Graeffe, upon account and in part payment of an indebtedness alleged to be due from the defendant, Albert J. Graeffe, to the defendant, Mary J. Graeffe, and these defendants, further answering, deny that whole amount of such indebtedness had been extinguished or paid by the transfers of real estate and household furniture set forth in said bill.

And these defendants, further answering, aver that the true cause of consideration of the transfers of said goods, wares, and merchandise by said Albert J. Graeffe to said Garner was that set up hereinbefore in the answer to the said complainant's bill, and that the alleged consideration thereof stated in said complainant's bill is denied by these defendants.

And these defendants, further answering, say they have been informed and believe it to be true that thereafter, as stated in said bill, the defendant Garner employed the defendant, William H. Bowen, to sell the said goods, wares, and merchandise, and that the said defendant Bowen did sell large portions thereof through the South and West, and that the said defendant Bowen thereupon shipped the goods, wares, and merchandise so sold to the said purchasers,
26 and that the defendant Bowen has collected considerable sums of money for and on account of the goods, wares, and merchandise so sold from purchasers thereof, but has failed to collect the purchase price from all the purchasers thereof, and that the said defendant Bowen has paid over a considerable portion of the same so collected to the defendant, Mary J. Graeffe.

And these defendants deny that the said defendant, Mary J. Graeffe, has never paid any consideration or value whatsoever for said goods, wares, and merchandise or for such portions or proceeds thereof as have been received by her; but, on the contrary, these defendants allege the fact to be that the said defendant, Mary J. Graeffe, paid for said goods on the purchase thereof by extinguishment of a portion of the indebtedness due to her from the defendant, Albert J. Graeffe, and that the sum so paid and extinguished exceeded the actual value of said goods, and these defendants deny that the said Mary J. Graeffe received the said goods with full knowledge that the same were the property of the defendant company or with any knowledge upon that subject, or that she received the same with knowledge of the facts set forth in said complainant's bill with reference thereto.

And these defendants, further answering, deny that the said goods, wares, and merchandise or any of them or any of the proceeds thereof are either justly or properly subject to the lien of the

complainant's said judgments, and also deny that the complainant is legally or equitably entitled to have the same or any part thereof applied in payment or satisfaction of the said judgments or either of them or any part of them, and these defendants deny all and all manner of unlawful combination and confederation wherewith they or either of them are by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill of complaint contained material or necessary for these defendants or either of them to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these
27 defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRANCIS C. REED,
Solicitor for the Defendants, Albert J. Graeffe, William H. Bowen, and The American Mills Co., 346 Broadway, New York City.

STATE, CITY, AND COUNTY AND SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert J. Graeffe and William H. Bowen, being each duly and severally sworn, say and each for himself says: I am one of the defendants named in the foregoing answer by whom the same is made. The said answer is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

And the said Albert J. Graeffe further says that he is treasurer of the defendant, The American Mills Company, by whom the foregoing answer is also made, and he makes this verification on behalf of the said corporation, the American Mills Company, as well as individually.

A. J. GRAEFFE.
WM. H. BOWEN.

Sworn to before me this 25th day of Feb'y, 1882.
WM. GEORGE OPPENHEIM,
Com. of Deeds, N. Y. City.

Endorsed: U. S. circuit court, southern dist. of N. Y. The Fourth National Bank *vs.* Albert J. Graeffe and William H. Bowen, impleaded, &c. Original answer. Francis C. Reed, att'y for def'ts. U. S. circuit court. Filed Feb'y 25, 1882. Joseph M. Deuel, clerk.

28 Circuit Court of the United States for the Southern District of New York.

THE FOURTH NATIONAL BANK
against
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, MARY J. GRAEFFE, WILLIAM H. GARNER, and WILLIAM H. BOWEN.

The answer of William H. Garner, one of the above-named defendants, to the bill of complaint of The Fourth National Bank, complainant.

1st. This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, for answering, saith:

2nd. That he has no knowledge or information sufficient to form a belief that the complainant, The Fourth National Bank, is a corporation created or organized as stated in the complaint or otherwise.

3rd. This defendant admits that the defendant, The American Mills Company, is a corporation created and organized under the laws of the State of New York, transacting its business and having its principal office located at the city of New York, as alleged in said bill of complaint.

4th. That this defendant has not any knowledge or information sufficient to form a belief as to any of the allegations contained in that part of said bill of complaint beginning with the words "at various dates between Oct. 24th, 1880, and January 4th, 1881," on the first page thereof, and ending with the words "of the
29 value of fifty thousand dollars, and were reasonably worth that sum," on the 4th page of said bill.

5th. That this defendant is informed that in February, 1881, or at some time in said year, said Albert J. Graeffe became embarrassed in business, but as to whether or not he found himself in failing circumstances this defendant has not any knowledge or information sufficient to form a belief.

6th. This defendant, further answering, denies each and every allegation contained in that part of said bill of complaint commencing with the words "he thereupon, as your orator is informed and believes," on the 4th page thereof, and ending with the words "than the value of the property so transferred," on the 5th page of said bill.

7th. This defendant, further answering, denies that he has any knowledge or information sufficient to form a belief as to any of the allegations contained in that part of said bill of complaint commencing with the words "in further fulfillment," on the 5th page of said bill, ending with the words "by reason of moneys loaned and advances made by said Graeffe to said company upon said goods," on the same page.

8th. The said defendant, further answering on information and belief, denies that no such loans or advances had in fact been made, and he also denies that the defendant company was not indebted to the defendant, Albert J. Graeffe, in any sum whatever; also that he, said Graeffe, was indebted to said company.

9th. The said defendant, further answering, denies that he has any knowledge or information sufficient to form a belief as to whether or not said defendant, Albert J. Graeffe, on or about March 1st, 1881, or at any time, made certain other or any entries in his books of account purporting to constitute a sale of said goods, wares, and merchandise of the defendant company in his, said Graeffe's, possession, of the value of about $50,000 or of any other value, from himself, the said Albert J. Graeffe, to this defendant, William H. Garner; but, on the contrary, the defendant avers and insists
30 that said goods were at that time the property of the defendant, Albert J. Graeffe, and said Graeffe did sell, transfer, and deliver said goods to the defendant William H. Garner, as trustee of the defendant Mary J. Graeffe, and for a valuable consideration and not otherwise.

10th. This defendant, further answering, admits that said Albert J. Graeffe did sell, transfer, and deliver certain goods, wares, and merchandise to this defendant and placed him in possession and control thereof; that he, this defendant, did not of himself pay any consideration therefor, but this defendant denies that he had any knowledge of the manner in which said goods, wares, and merchandise had come into the hands of said Graeffe, or that they were the property of the defendant company.

11th. This defendant, further answering, alleges on information and belief that such goods, wares, and merchandise as were transferred to him by said Albert J. Graeffe at the time of the transfer and delivery thereof to him were the property of said Albert J. Graeffe; that this defendant in fact received the same on behalf of and as trustee of the said Mary J. Graeffe, and not otherwise.

12th. This defendant, further answering, alleges that he transferred and delivered said last-mentioned goods, wares, and merchandise to said Mary J. Graeffe to her in part payment of the indebtedness of said Albert J. Graeffe to her, and he denies on information and belief that the indebtedness of said Albert J. Graeffe to said Mary J. Graeffe had been extinguished and paid by the transfers to her of real estate and household furniture or otherwise.

13th. The defendant, further answering, alleges upon information and belief that said Bowen, in selling said last-mentioned goods, wares, and merchandise, acted as the agent of said Mary J. Graeffe, and the same were sold for and on her account; and this defendant alleges on information and belief that she was and is entitled to the proceeds thereof, and he denies that she has never paid any
31 consideration or value for the said goods, wares, and merchandise or for such portion of the proceeds thereof as have been received by her.

14th. This defendant, further answering on information and belief, denies that said Mary J. Graeffe received said goods, wares,

and merchandise with full or any knowledge, that the same were the property of the defendant company or of the pretended facts alleged in said bill of complaint.

15th. This defendant, further answering, denies that the acts and doings of this defendant have been or are contrary to equity or good conscience or to said complainant's alleged equitable rights, or that said goods, wares, and merchandise or the proceeds thereof are justly or properly subject to the lien of said complainant's alleged judgments, or that said complainant is legally or equitably entitled to have the same applied in payment or satisfaction of the said alleged judgments.

16th. And this defendant, further answering said bill of complaint, alleges, upon information and belief, that such goods, wares, and merchandise as were transferred to the defendant, Mary J. Graeffe, from the defendant, Albert J. Graeffe, through the defendant, were the property of the said defendant, Albert J. Graeffe; that at the time of the said transfer and for a long time prior thereto the said defendant, Albert J. Graeffe was and had been indebted to the defendant Mary J. Graeffe for moneys and securities advanced and loaned to him by her in a large sum of money, to wit, in the sum of $100,000 and upwards; that said transfer so made as aforesaid was made in good faith and as part payment of said indebtedness and not otherwise, and that after applying on account of said indebtedness all property transferred by said defendant Albert J. Graeffe to the said defendant Mary J. Graeffe he still remains indebted to her in a large sum of money, to wit, in the sum of $17,000 and upwards.

W. H. GARNER.

BAGLEY & THAIN,
Sol's for Def't, W. H. Garner, and of Counsel.

32 UNITED STATES OF AMERICA,
Southern District of New York. } ss:

William H. Garner, being duly sworn, deposeth and saith that he is the defendant in the foregoing answer named; that he has read the foregoing answer and knows the contents thereof; that the said answer is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

W. H. GARNER.

Sworn to before me this 2nd day of Feb'y, 1882.

JOHN R. O'HALLORAN,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y.

Endorsed: Circuit court of U. S., southern dist. N. Y. The Fourth National Bank ag't The American Mills Company *et al.* Answer of defendant, William H. Garner. Bagley & Thain, sol's for said defendant, 8 Wall St., New York. U. S. circuit court. Filed Feb'y 3, 1882. Joseph M. Deuel, clerk.

33 Circuit Court of the United States for the Southern District of New York.

THE FOURTH NATIONAL BANK
against
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, MARY J. GRAEFFE, WILLIAM H. GARNER, and WILLIAM H. BOWEN.

The answer of Mary J. Graeffe, one of the above-named defendants, to the bill of complaint of The Fourth National Bank, complainant.

1st. This defendant, now and at all times hereafter saving and reserving unto herself all benefit and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint, for answer thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, this defendant, for answering, saith:

2nd. That she has no knowledge or information sufficient to form a belief that the complainant, The Fourth National Bank, is a corporation created and organized as stated in the complaint or otherwise.

3rd. This defendant admits that the defendant, The American Mills Company, is a corporation created and organized under the laws of the State of New York, transacting its business and having its principal office located at the city of New York, as alleged in said bill of complaint.

4th. That this defendant has not any knowledge or information sufficient to form a belief as to any of the allegations contained in that part of said bill of complaint beginning with the words "at
34 various dates between October 24th, 1880, and January 4th, 1881," on the first page thereof, and ending with the words "of the value of fifty thousand dollars, and were reasonably worth that sum," on the 4th page of said bill of complaint.

5th. That this defendant is informed that in February, 1881, or at some time in said year, said Albert J. Graeffe became embarrassed in business, but as to whether or not he found himself in failing circumstances this defendant has not any knowledge or information sufficient to form a belief.

6th. This defendant, further answering, denies each and every allegation contained in that part of said bill of complaint commencing with the words "he thereupon, as your orator is informed and believes," on the 4th page thereof, and ending with the words "than the value of the property so transferred," on the 5th page of said bill.

7th. This defendant, further answering, denies that she has any knowledge or information sufficient to form a belief as to any of the allegations contained in that part of said bill of complaint commencing with the words "in further fulfillment," on the 5th page of said bill, and ending with the words "by reason of moneys loaned

and advances made by said Graeffe to said company upon said goods," on the same page.

8th. The said defendant, further answering on information and belief, denies that no such loans or advances had in fact been made, and she also denies that the defendant company was not indebted to the defendant, Albert J. Graeffe, in any sum whatever; also that he, said Graeffe, was indebted to said company.

9th. The said defendant, further answering, denies that she has any knowledge or information sufficient to form a belief as to whether or not said defendant, Albert J. Graeffe, on or about March 1st, 1881, or at any time, made certain other or any entries in his books of account purporting to constitute a sale of said goods, wares, and merchandise of the defendant company in his, said Graeffe's, possession, of the value of about $50,000 or of any other value, from him-
35 self, the said Albert J. Graeffe, to the defendant, William H. Garner, but, on the contrary, this defendant avers and insists that said goods were at that time the property of the defendant, Albert J. Graeffe, and that said Graeffe did sell, transfer, and deliver said goods to the defendant, William H. Garner, as trustee for this defendant and for a valuable consideration, and not otherwise.

10th. The said defendant, further answering, admits that said Albert J. Graeffe did sell and transfer certain goods, wares, and merchandise to the defendant Garner and placed him in possession and control thereof; that said Garner did not of himself pay any consideration therefor; but this defendant denies, on information and belief, that said Garner had any knowledge of the manner in which said goods, wares, and merchandise had come into the hands of said Graeffe, or that they were the property of the defendant company.

11th. The said defendant, further answering, alleges, on information and belief, that such goods, wares, and merchandise as were transferred to said Garner by said Graeffe at the time of the transfer and delivery thereof to said Garner were the property of said Albert J. Graeffe; that said Garner, in fact, received the same on behalf and as trustee of this defendant and not otherwise.

12th. The said defendant, further answering, alleges that said last-mentioned goods, wares, and merchandise were by said Garner transferred and delivered to her in part payment of the indebtedness of said Albert J. Graeffe to her, and she expressly denies that the indebtedness of said Albert J. Graeffe to her had been extinguished and paid by the transfers of real estate and household furniture or otherwise.

13th. This defendant, further answering, alleges that said Bowen in selling said last-mentioned goods, wares, and merchandise acted as her agent, and the same were sold for and on account of this defendant; and she alleges that she was and is entitled to the proceeds thereof, and she denies that she has never paid any con-
36 sideration or value for the said goods, wares, and merchandise or for such portion of the proceeds thereof as have been received by her.

14th. This defendant, further answering, denies that she received

said goods, wares, and merchandise with full or any knowledge of the said goods, wares, and merchandise were the property of the defendant company or of the pretended facts alleged in said bill, and she avers that said goods, wares, and merchandise transferred to her were the property of said Albert J. Graeffe.

15th. This defendant, further answering, denies that the acts and doings of said defendant have been or are contrary to equity or good conscience or to said complainant's alleged equitable rights, or that said goods, wares, and merchandise or the proceeds thereof are justly or properly subject to the lien of said complainant's alleged judgments, or that said complainant is legally or equitably entitled to have the same applied in payment or satisfaction of the said alleged judgments.

16th. This defendant, further answering said bill of complaint, alleges that such goods, wares, and merchandise as were transferred to her, this defendant, from the defendant, Albert J. Graeffe, through the defendant, William H. Garner, were the property of said defendant, Albert J. Graeffe; that at the time of said transfer and for a long time prior thereto the said defendant, Albert J. Graeffe, was and had been indebted to this defendant for moneys and securities advanced and loaned to him by her in a large sum of money, to wit, in the sum of $100,000 and upwards; that said transfer, so made as aforesaid, was made in good faith and as part payment of said indebtedness and not otherwise, and that, after applying, on account of said indebtedness, all property transferred by said defendant, Albert J. Graeffe, to this defendant, he still remains indebted to this defendant in a large sum of money, to wit, in the sum of $17,000 and upwards.

Wherefore, by reason of the premises, this defendant prays that complainant's bill of complaint may be dismissed, and that
37 she be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

MARY J. GRAEFFE.

BAGLEY & THAIN,
Sol'rs for Def't, Mary J. Graeffe, and of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

Mary J. Graeffe, being duly sworn, deposeth and saith that she is the defendant in the foregoing answer named; that she has heard the same read and knows the contents thereof; that the said answer is true of her own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters she believes the same to be true.

MARY J. GRAEFFE.

Sworn to before me this 31st day of January, 1882.

JAMES KEARNEY,
[SEAL.] *Notary Public (No. 4), New York County.*

[Endorsed:] Circuit court of United States, southern district of New York. The Fourth National Bank, plaintiff, ag't The American Mills Co. *et al.*, defendants. Answer of defendant, Mary J. Graeffe. Bagley & Thain, — def't Mary J. Graeffe, 8 Wall St., New York city. U. S. circuit court. Filed Feb'y 3, 1882. Joseph M. Deuel, clerk.

38 Circuit Court of the United States for the Southern District of New York.

THE FOURTH NATIONAL BANK
against
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, Mary J. Graeffe, William H. Garner, and William H. Bowen. } In Equity.

The replication of The Fourth National Bank, complainant, to the answer of the above-named defendant, Mary J. Graeffe.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant—

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BRISTOW, PEET & OPDYKE,
Solicitors for Complainant.

39 UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

Octavius D. Baldwin, being duly sworn, deposeth and saith that he is the vice-president of the Fourth National Bank and repliant in the foregoing replication named, and has read the same and knows the contents thereof; that the said replication is true of his own knowledge except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes the same to be true.

O. D. BALDWIN.

Sworn to before me this 4th day of March, 1882.

EDWARD B. WHITNEY,
[L. S.] *Notary Public, N. Y. Co.*

40 (Endorsed:) U. S. circuit court. The Fourth National Bank, plaintiff, *vs.* The American Mills Co. *et al.*, defendants. Replication. Bristow, Peet & Opdyke, attorneys for complainant,

20 Nassau street, N. Y. city. U. S. circuit court. Filed [illegible] 1882. Joseph M. Deuel, clerk.

41 Circuit Court of the United States for the Southern District of New York.

THE FOURTH NATIONAL BANK
ag'st
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, Mary J. Graeffe, William H. Garner, & William H. Bowen. } In Equity.

The replication of The Fourth National Bank, complainant, to the answer of the above-named defendants, William H. Garner.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove
42 its said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant—

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BRISTOW, PEET & OPDYKE,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, } ss:

43 Octavius D. Baldwin, being duly sworn, deposeth and saith that he is the vice-president of the Fourth National Bank and repliant in the foregoing replication named, and has read the same and knows the contents thereof; that the said replication is true of his own knowledge except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes the same to be true.

O. D. BALDWIN.

Sworn to before me this 4th day of March, 1882.

EDWARD B. WHITNEY,
[L. S.] *Notary Public, N. Y. Co.*

Endorsed: U. S. circuit court. The Fourth National Bank, plaintiff, *vs.* The American Mills Co. *et al.*, defendants. Repli-
44 cation. Bristow, Peet & Opdyke, attorneys for compl't, No. 20 Nassau St., N. Y. city. U. S. circuit court. Filed Mar. 4th, 1888. Joseph M. Deuel, clerk.

45 Circuit Court of the United States for the Southern District of New York.

THE FOURTH NATIONAL BANK
ag'st
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, Mary J. Graeffe, William H. Garner, and William H. Bowen. } In Equity.

The replication of The Fourth National Bank, complainant, to the answer of the above-named defendants, The American Mills Company, Albert J. Graeffe, and William H. Bowen.

That repliant, saving and reserving unto itself all and all manner of advantage or exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver
46 and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant—

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BRISTOW, PEET & OPDYKE,
Solicitors for Complainant.

47 UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*
City & County of New York,

Octavius D. Baldwin, being duly sworn, deposeth and saith that he is the vice-president of the Fourth National Bank, the repliant in the foregoing replication named, and has read the same and knows the contents thereof; that the said replication is true of his own knowledge, except as to the matters which are therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

O. D. BALDWIN.

Sworn to before me this 4th day of March, 1882.
[L. S.] EDWARD B. WHITNEY,
Notary Public, N. Y. Co.

(Endorsed:) U. S. circuit court. The Fourth National
48 Bank, plaintiff, ag'st The American Mills Co. *et al.*, defendants. Replication. Bristow, Peet & Opdyke, att'ys for complainant, 20 Nassau street, N. Y. city. U. S. circuit court. Filed Mar. 4, 1882. Joseph M. Deuel, clerk.

49 In the Circuit Court of the United States, Southern District of N. Y.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,
ag'st
ALBERT J. GRAEFFE, THE AMERICAN MILLS COMPANY, and WILLIAM H. BOWEN, Impleaded with Others, Respondents.

I hereby consent that Samuel W. Bowen, Esq., be substituted as solicitor in this action for the defendants, Albert J. Graeffe, The American Mills Company, and William H. Bowen, in my place and stead.

N. Y., Jan. 24th, 1884.

F. C. REED,
Sol'r & Att'y for said Def'ts.

(Endorsed:) U. S. circuit court, southern dist. of N. Y.

50 & 51 The Fourth National Bank of the City of N. Y. *vs.* The American Mills Company, Albert J. Graeffe, *et al.* Consent of substitution. Samuel W. Bowen, solicitor for def'ts, A. M. Co. *et al.*, 35 Pine St., N. Y. city. U. S. circuit court. Filed Apr. 17, 1886. Timothy Griffith, clerk.

52 U. S. Circuit Court, Southern District of New York.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK
against
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. GARNER, MARY J. GRAEFFE, and WILLIAM H. BOWEN.

It is stipulated, consented, and agreed that the depositions herein on behalf of complainant and defendants may be taken pursuant to the 67th rule in equity, as amended, before Carsten Wendt, a notary public duly commissioned and authorized to act within the city and county of New York, in the southern district of New York, with like force and effect and in all respects in the same manner as if the same were taken before one of the examiners of the court or before an examiner specially appointed by the court. Signature of depositions by witnesses is waived.

BRISTOW, PEET & OPDYKE,
Complainant's Attorneys.
ALEX. THAIN,
Attorney for Defendants.

Complainant's Proofs.

NEW YORK, *Sept. 25th*, 1882.

Present: Counsel for both parties.

Counsel for defendants admits the incorporation of the complainant, as alleged in the bill of complaint.

53 Counsel for complainant offers in evidence seven accept-

ances drawn by the American Mills Company and accepted by A. J. Graeffe, as follows:

Acceptance numbered 7, dated East Greenwich, R. I., October 28th, 1880, drawn and signed by the American Mills Company, by J. C. Schrader, pres't, directed to Mr. A. J. Graeffe, 62 White St., New York, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of twenty-five hundred dollars; endorsed: American Mills Co., J. C. Schrader, pres't, and accepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of Nov. 1, 1880.

Acceptance numbered 2163, dated East Greenwich, R. I., Nov. 19th, 1880, drawn and signed by the American Mills Company, by J. C. Schrader, pres't, directed to Mr. A. J. Graeffe, 62 White street, New York, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of twenty-five hundred dollars; endorsed: American Mills Co., J. C. Schrader, pres't, and accepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of Nov. 20th, 1880.

Acceptance numbered 2165, dated East Greenwich, R. I., Nov. 26th, 1880, drawn and signed by the American Mills Company, by J. C. Schrader, pres't, directed to Mr. A. J. Graeffe, 62 White St., New York, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of thirty-five hundred dollars; endorsed: American Mills Co., J. C. Schader, pres't, and accepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of Nov. 27th, 1880.

Acceptance numbered 2172, dated East Greenwich, R. I., Dec'r 14th, 1880, drawn and signed by the American Mills Company, by J. C. Schrader, pres't, directed to Mr. A. J. Graeffe, 62 White St., New York, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of three thousand dollars; endorsed: American Mills Co., J. C. Schrader, pres't, and ac-
54 cepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of Dec. 15th, 1880.

Acceptance numbered 2174, dated East Greenwich, R. I., Dec'r 20th, 1880, drawn and signed by the American Mills Company, by J. C. Schrader, pres't, directed to Mr. A. J. Graeffe, 62 White St., New York, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of three thousand dollars; endorsed: American Mills Co., J. C. Schrader, pres't, and accepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of Dec. 21st, 1880.

Acceptance numbered 2175, dated East Greenwich, R. I., Dec'r 23d, 1880, drawn and signed by the American Mills Company, by J. C. Schrader, president, directed to Mr. A. J. Graeffe, 62 White St., New York, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of three thousand dollars; endorsed: American Mills Co., J. C. Schrader, pres't, and accepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of December 24th, 1880.

Acceptance numbered 2180, dated East Greenwich, R. I., Jan'y 4th, 1881, drawn and signed by the American Mills Company, by J. C.

Schrader, pres't, directed to Mr. A. J. Graeffe, 62 White St., New York city, and requiring him to pay, four months after date, to the order of the drawer, for value received, the sum of three thousand dollars; endorsed: American Mills Company, J. C. Schrader, pres't, and accepted, payable at the Fourth National Bank, New York city, by the said A. J. Graeffe, under date of Jan'y 5th, 1881.

Counsel for defendants admits that the acceptances offered in evidence were duly protested and notice thereof duly served on the drawer at the dates when said acceptances became due.

Counsel for complainant offers in evidence duly exemplified copy of judgment-roll, showing recovery of judgment upon the acceptance first above set forth for $2,533.84 in the supreme court of the
55 State of New York in and for the city and county of New York, upon March 30, 1881, in favor of the complainant and against the American Mills Company and Albert J. Graeffe; also transcript showing docketing of said judgment in the office of the clerk of the city and county of New York upon March 30, 1881; also execution issued thereon to the sheriff of the city and county of New York on the same day; also return of sheriff endorsed thereon, showing due return of said execution wholly unsatisfied on or about September 1, 1881.

Counsel for complainant offers in evidence duly exemplified copy of judgment-roll, showing recovery of judgment in the court of common pleas for the city and county of New York on June 22, 1881, upon the foregoing drafts, save the first one, in favor of the complainant and against the American Mills Company and Albert J. Graeffe, for $18,224; also transcript showing docketing of said judgment in the office of the clerk of the city and county of New York upon June 22, 1881; also execution issued upon same to the sheriff of the city and county of New York upon June 22, 1881, and said sheriff's certificate showing due return of same, wholly unsatisfied, upon September 1, 1881.

Counsel for defendants admits that the judgments were docketed upon the dates shown in the transcripts offered.

GEORGE E. STUART, being called for complainant, testifies as follows:

Direct examination by complainant's counsel:

Q. Please state your business.
A. My business is real estate.
Q. What was it in September, 1880?
A. I assisted in Mr. Graeffe's office.
Q. You assisted the book-keeper?
A. Yes.
Q. And were in Mr. Graeffe's employment?
A. Yes, sir.
56 Q. Please state what Mr. Graeffe's business was.
A. He was a commission merchant.
Q. Was that his exclusive business?
A. Yes, sir.
Q. What articles did he deal in?
A. Shawls and quilts.

Q. Whose goods did he handle on commission?

A. The American Mills Company's, principally.

Q. After September, 1880, especially, whose goods did he chiefly handle?

A. The American Mills Company.

Q. Did he sell their goods on commission?

A. Yes, sir.

Q. Just describe what the course of business was when he received goods from them—what was done.

A. The goods were sent from the American Mills Company to him and they were sold for their account, and sketches were rendered every week of sales to the company and at the first of every month an account current was rendered.

Q. And a charge was made for commission?

A. Yes, sir; 7½ per cent.

Q. And an account current was furnished at the end of each month?

A. Yes, sir.

Q. Did these consignments continue from September, 1880, to the end of February, 1881?

A. Yes, sir.

Q. And during that time were considerable consignments of goods of the American Mills Company made to Mr. Graeffe?

A. Yes, sir; right straight along—every day almost.

Q. On February 28, 1881, were there any goods of the American Mills Company in Mr. Graeffe's possession—on hand?

A. I think there were.

Q. State generally what they were.

Objected to for the reason that the witness does not say that goods of the American Mills Company were in Mr. Graeffe's possession, but that he thinks so.

57 Q. Do you know whether goods of the American Mills Company were on hand in Mr. Graeffe's possession?

Objected to as leading.

Q. Do you know whether or not there were any goods of the American Mills Company in Mr. Graeffe's possession on February 28th, 1881?

A. There were.

Q. State generally what those goods were.

A. Shawls.

Q. Manufactured by the American Mills Company?

A. They did.

Q. That was their exclusive business—to make different kinds of shawls?

A. Yes, sir.

Q. Can you state what was done with these goods?

A. They were transferred to Mr. Garner—sold to him.

Q. Was there an entry made of these goods which were transferred to Mr. Garner?

A. Yes, sir.

Q. Who made it?
A. I did.
Q. By the direction of any person, or how?
A. Yes, sir; by Mr. Graeffe's direction.
Q. Will you look at that book which I show you now and state if you recognize it and state what it is?
A. I recognize that book; that is the sales book of Mr. Graeffe.
Q. Does that contain the entry which you say you made?
A. Yes.
Q. Will you turn to that entry?
A. Yes, sir; from page 30 to page 42.
Q. And that entry, you say, was made at the time of the transfer to Mr. Garner?
A. Yes, sir.
Q. And is it an accurate list of the goods transferred to Mr. Garner?
A. Yes.

58 Said entry from page 30 to page 42 of said book is offered in evidence by complainant.

The entry is dated March, 1881, and is headed William H. Garner, city. It describes goods designated as "Bavaria shawls, Saratoga and Zenobia wraps, Rosalind shawls, Olymyia hair lines, Bernhardt wraps, Palisade hair lines, Sea Breeze wraps, La Favorita shawls, Lucerne shawls, Viola shawls, C. & W. shawls, B. & W. wool shawls, wool hair lines, 30 x 30 cotton shawls, two-ply finished quilts, Paisley shawls, Brighton shawls, princess shawls, Francaise shawls, Valley Forge shawls, style No. 95 shawls, Josephine ottomans, light novelty quilts, Niagara ottomans, fancy figured quilts, Flora shawls, Narragansett shawls, Boulevard shawls, imperial ottomans, Hanover shawls, Caucasian wraps, Gerster hair lines, royal shawls, May Belle hair lines, Columbia plaids, empress shawls, No. 108 shawls, Eugenia plaid." These goods are charged at separate prices for each variety of goods. The aggregate of all the prices is $47,901.11. From this is deducted a commission of 6 per cent., amounting to $2,836.81, leaving as the net price of the goods $45,064.30.

Q. Were there any other goods on hand in Mr. Graeffe's possession on the 28th of February, 1881, than those of the American Mills Company?
A. I think there were some quilts there from other parties.
Q. And that was all?
A. That was about all.
Q. Did Mr. Garner come to the store after this transfer at any time?
A. Yes, sir; he was in the store.
Q. What did he do when he was there?
A. Sat in the office; walked around in the store.
Q. How often was he there?
A. I could not say exactly; he was there several times.
Q. Who had charge of the goods after this 28th of February?

59 A. Mr. Bowen had charge of them after the transfer to Mr Garner.

Q. And these goods were delivered to Mr. Garner, you say?

A. They were delivered to Mr. Garner—he took possession of them.

Q. Were any goods other than those enumerated in that list ever turned over to Mr. Garner?

A. I do not know of any.

Q. Would you have known if there had been?

A. I should think so.

Q. You were assisting the book-keeper?

A. Yes, sir.

Q. Was there an account sales of that transfer made?

A. Yes.

Q. By whom?

A. I presume by myself.

Q. Will you look at that book and say if you recognize that too (book shown witness)?

A. Yes, sir; I do.

Q. What is it?

A. Account sales of the American Mills Company with A. J. Graeffe.

Q. Sales made by A. J. Graeffe for the American Mills Company?

A. Yes.

Q. Will you look at the pages which I show you, consisting of pages 37 to 52, and state if that is the account sales of the transaction of which you have been testifying?

A. Yes, sir; from where it begins February 28th, on page 37 to page 52.

Q. Is that account sales in the same form as that usually rendered by Mr. Graeffe to the American Mills Company?

A. Yes, sir.

Q. And the charge for commission included there is the same, too, is it?

A. Yes, it is.

60 Said pages from 37 to 52 are offered in evidence by complainant. The entry is entitled "American Mills Company," and is dated February 28, 1881. It describes the goods specified in the sales-book entry above set forth and charges them at the prices therein stated. The entry now offered describes other goods also. The aggregate of the prices of all the goods stated in the present (account sales) entry is $55,892 46

From this are deducted—

Commissions, guarantees, and charges.....	$4,191 93	
Freights.....	49 16	
Cartage	17 50	
Telegrams	1 00	
		$4,259 59
Leaving balance, average due March 21, 1881...		$51,632 87

Q. There appear to be prices carried out in these entries; can you state who fixed those prices?

A. They were the regular prices, I guess.

Q. Which you were charging for goods at that time?

A. Yes, sir.

Q. And at which you were selling at that time?

A. Yes, sir.

Q. That account sales was rendered to the American Mills Company?

A. Yes, sir.

Cross-examination:

Q. How long have you been in the real-estate business?

A. Since I left Mr. Graeffe the last time. I was in the real-estate business before that.

Q. When did you leave Mr. Graeffe?

A. When he failed.

Q. What date?

A. Some time in the early part of March I left his employ. I was with the assignee for two or three weeks. I think I left the assignee on the 20th or 23d of March; somewheres around that time.

61 Q. And you ceased being in Mr. Graeffe's employ about what date?

A. In the early part of March; the 3d or 4th of March, I think; as soon as the assignee took possession.

Q. And that, you think, was the 3d or 4th of March?

A. Yes, sir; somewheres around that time.

Q. Where do you carry on business?

A. At 205 Broadway.

Q. Are you in business with anybody?

A. No, sir; by myself.

Q. Where had you been employed before you went in Mr. Graeffe's employ?

A. I had been with my father-in-law in the building business?

Q. What is his name?

A. Samuel Lynch.

Q. When did you leave his employ?

A. When he failed. I cannot tell the exact date.

Q. About when?

A. It was about two years previous to that.

Q. About 1879, then?

A. Yes; about that time.

Q. What were you doing in the interval?

A. I was in the real-estate business.

Q. Where?

A. At 178 Broadway.

Q. Who were you with—anybody?

A. No, sir; by myself.

Q. How long were you with your father-in-law?

A. About six years, I think.

Q. What was your position with him?
A. As his book-keeper and manager.
Q. What had been your business prior to that time?
A. I was in the insurance business.
Q. When did you cease the insurance business or your connection with it?
A. When I went with him, I think, in 1873.
Q. How long had you been in the insurance business?
A. About two years.
62 Q. In what capacity did you act in that business?
A. As agent.
Q. For what company?
A. The Homœopathic Mutual Life Insurance Company.
Q. What had been your business before that?
A. In the Stuyvesant Bank.
Q. The insurance company also failed?
A. No, sir.
Q. The Stuyvesant Bank failed?
A. Yes.
Q. How long were you with the Stuyvesant Bank?
A. Four or five years.
Q. In what capacity did you act?
A. As general book-keeper.
Q. Do you recollect the year when you left the employ of the bank?
A. I think they failed in 1871.
Q. You had been with them four or five years?
A. Yes; since 1867—four years and a half.
Q. What had been your business prior to that?
A. I was entry clerk in a wholesale drug-house—Pinchard, Brune & Ritchie, in Fulton street; it was then.
Q. What is the firm now?
A. Brune Bros. & Ritchie.
Q. How long were you with that firm?
A. Two or three years. That is as far back as I go.
Q. What had been your business prior to that?
A. No business except going to school. My first employment was in the drug-house.
Q. Do you know how the books which have been shown you to-day came here?
A. No, sir; I do not know anything about that.
Q. The second book referred to by you in your testimony is marked "American Mills Company Account Sales, A. J. Graeffe, No. 4."
A. Yes, sir.
Q. And the items to which you referred are dated the 28th of February, 1881?
A. Yes, sir.
63 Q. And the entire transaction, so far as the goods you have mentioned, took place on that date, the 28th of February?
A. Yes, sir.

Q. What other books did you keep for Mr. Graeffe besides the account sales and the book first shown you to-day, the sales book?

A. There was a sketch book similar to the account sales—that is, of a similar make.

Q. What did you call it?

A. Sketch book.

Q. What other books did you keep?

A. Insurance book. I do not know whether there were any others or not. It is so long ago that I have forgotten.

Q. The sales book, which you have examined, shows all sales made by Mr. Graeffe?

A. Yes, sir; sales to a certain date.

Q. Up to the 1st of March?

A. Yes.

Q. But all sales made by him of whatever goods there were, whether American Mills Company's or any other company's or his own goods?

A. Yes.

Q. This sales book does not purport, then, to show sales merely of the American Mills Company manufacture?

A. No, sir.

Q. The entries that you have referred to are made regularly on the books just the same as any other transaction?

A. Yes, sir.

Q. Do you recollect the date of the last account current furnished to the American Mills Company?

A. No, sir; I cannot tell you the date.

Q. It was after the transaction you speak of as had with Mr. Garner?

A. Yes, sir.

Q. You did that part of the business, furnishing the accounts current?

A. Yes, sir.

64 Q. You furnished the account currents to the different parties that Mr. Graeffe was dealing with?

A. Yes.

Q. Did you keep a book showing copies of these account currents?

A. Yes, sir.

Q. That is not here that you know of?

A. No, sir; it was a letter book.

Q. When you speak of goods having been consigned by the American Mills Company to Mr. Graeffe, what do you know of that? Did you have any conversation with any officer of the American Mills Company or did you hear any conversation between Mr. Graeffe and any officers of the American Mills Company as to the terms upon which Mr. Graeffe received goods from the American Mills Company?

A. No, sir; nothing about terms. They sent with the consignment blanks showing what the consignments were, and from those blanks, after they were checked off, the entries in the books were made.

Q. But you did not know what the understanding or arrangement between Mr. Graeffe and these people were other than the papers showed which you saw by way of consignment blanks?
A. That is all.

Redirect:

Q. There was a regular set of mercantile books kept in Mr. Graeffe's office?
A. Yes, sir; a regular set of books, but I did not have anything to do with them.
Q. And you answered Mr. Thain (defendants' counsel) then in regard to the particular books that you kept?
A. Yes, sir.
Q. Were there any other shawls consigned to Mr. Graeffe than those of the American Mills Company at about this time or prior to the 28th of February, 1881?
A. No, sir; not about that time; there were quilts consigned, but no other shawls.

65 Q. What were the consignment blanks?
A. Blank headings showing such and such goods of the American Mills Company consigned to A. J. Graffe—giving the number of the cases and the shawls in the cases.
Q. Those came with the goods consigned?
A. Well, they came by mail.
Q. Account sales were rendered at the end of each month to the American Mills Company?
A. Yes, sir; rendered, in fact, to everybody.
Q. Do you know whether Mr. Graffe was an officer of the American Mills Company?
A. I had no real knowledge of it.

66 WILBUR F. CALVERT, called for complainant, testifies as follows:

Direct examination:

Q. What is your business?
A. Salesman.
Q. In what branch of business?
A. Shawls.
Q. How long have you been in that business?
A. Since the beginning of 1877.
Q. With what house are you now?
A. Knower & Thomas.
Q. Were you ever employed by Mr. Graeffe?
A. Yes, sir.
Q. Please state in what capacity with Mr. Graeffe.
A. As salesman.
Q. Selling shawls?
A. Yes.
Q. What was Mr. Graeffe's business?
A. Commission business.

Q. In what did he deal?
A. Shawls and quilts.
Q. Was that his exclusive business?
A. Yes, sir; except some dress goods on a very small scale.
Q. But commission business was his exclusive business?
A. Yes.
Q. Whose goods did he deal in and handle particularly along in and after September, 1880?
A. The American Mills Company's, John C. Schrader & Co.'s, and quilts from one or two small parties that I am not acquainted with.
Q. Whose goods did he deal in most largely?
A. The American Mills Company's.
Q. Did he receive consignments of goods from that company?
A. Yes, sir.
Q. What did he do with the goods consigned to him?
67 A. Sold the goods; that is all I can say.
Q. Were consignments from September, 1880, to February, 1881, pretty constantly received by Graeffe from the American Mills Company?
A. Yes, sir—that is, from September to the middle of November I was not in the city.
Q. When you were there, please state whether they were constant or otherwise.
A. Pretty constantly received.
Q. At this latter date, previous to the date of the 28th of February, 1881, were there any goods of the American Mills Company in Mr. Graeffe's possession?
A. Yes, sir.
Q. State, in as much detail as you can, what the goods were.
A. It consisted of shawls and some quilts.
Q. Did the American Mills Company manufacture quilts?
A. Yes.
Q. State what was done with these goods of the American Mills Company on the 28th of February, 1881.
A. They were sold to Mr. Garner.
Q. And were they delivered to him?
A. Well, they were not delivered to him personally that I know of; they were sent to a warehouse.
Q. Did Mr. Garner take control of the store?
A. No; not control of the store. After Mr. Graeffe's assignment the assignee took charge.
Q. Did he take control of any goods of the American Mills Company?
A. Mr. Garner would come to the store and notified Mr. Bowen to see that the things were properly done, that he had charge of the goods.
Q. You heard him say that to Mr. Bowen, did you?
A. Yes.
Q. State, as near as you can, what he said to Mr. Bowen.
A. As near as I can judge, that he had bought the goods and wanted Mr. Bowen to see that they were properly delivered to the warehouse, etc.

68 Q. Can you state whether these lists which are offered in evidence are accurate lists of the goods which were turned over to Mr. Garner?

A. I cannot say that, except they are supposed to comprise all that there was on hand.

Mr. Thain moves to strike out what they are supposed to comprise.

Q. State what you know in regard to the manner in which the first list was made.

A. My business was simply salesman. That entry comprised the goods that were on hand on the 28th of February, 1881, and sold to Mr. Garner.

Q. Do I understand that those were the goods of the American Mills Company which were in the store?

A. Yes, sir; I did not know of anything else that was there.

Q. All the goods of the American Mills Company that were in the store were turned over to Mr. Garner. Is that so?

A. Yes, sir; they were comprised in this sale.

Q. Were you familiar with the value of these goods in February, on the 28th, 1881?

A. Yes, sir.

Q. Can you state what they were worth?

A. In what way?

Q. State what they were worth. Were they worth the prices which appear in these entries?

A. Yes, sir; I cannot tell that. Yes, sir; they are worth the prices entered there. About the quilts I know nothing, as I did not sell quilts. The prices there entered of the shawls are all right.

Q. Do you know who fixed those prices?

A. I believe Mr. Graeffe did.

Q. Did Mr. Graeffe make a memorandum in which he fixed these prices himself?

A. Yes.

Q. Have you got that with you?

A. Yes, sir.

Q. Will you please produce it?

(Witness produces paper.)

69 Q. In whose handwriting is that paper?

A. In Mr. Graeffe's.

Q. When was it made?

A. It is dated the 28th of February. I suppose it was made on that day.

Q. That was the date when this transaction took place?

A. Yes, sir.

Said paper is offered in evidence by complainant. It is as follows:

Feb. 28, 1881.

Zenobias and Saratogas			$1 25	Reg.
Lafavorette shawls			1 62½	"
Princess "			1 87½	"
Bavaria "			1 12½	"
63	126 C. & W.		1 80	"
63	63 "		90	"
40	40 B. & W. wool	doz.	6 00	"
Bernhardt wraps			75	"
Brighton plaids			75	"
35	35 cotton do.	doz.	1 75	"
Paisleys			2 00	"
Sea Breeze wraps			1 00	"
Caucasian "			1 75	"
37	37 Viola		6 00	"
35	35 C. & W. plaids		3 50	"
"	Rosalinds		4 50	"
"	Hanovers		4 25	"
37	37 Lucernes		6 00	"
Olympias			1 40	"
Wool H. lines			1 40	"
Border H. lines			1 25	"
No. 33 Francaise			1 75	"
Palisades			57½	"
Valley Forge			3 50	"
Novelty quilts			60	"
2-ply H. C. "			60	"
F'cy fig'd "			1 00	"
All 7 % 10 days.				
Style 95			1 50	"

70 Q. The prices stated on that memorandum are about the market prices of those goods?

A. I suppose so, with one or two exceptions. I suppose that was all we could put them on the market and sell them for.

Q. Were there any other goods sold to Mr. Garner by Mr. Graeffe besides these that you know of?

A. Not to my knowledge.

Q. Would you have known if there had been?

A. You mean of the goods on hand in the store?

Q. Yes.

A. Yes; I would.

Cross-examination:

Q. What had you to do with the negotiation between Mr. Garner and Mr. Graeffe?

A. Nothing.

Q. Where were you when the negotiations were carried on between them?

A. I could not say where I was.

Q. How do you know, then, that any negotiations were had between them?

A. My only knowledge of there being any transaction between them was because goods were being sold to Mr. Garner and goods were being made up in the store to be delivered.

Q. Goods being sold to Mr. Garner, you say—what was done?

A. The goods were charged to Mr. Garner.

Q. Did you have anything to do with charging them?

A. Nothing, sir.

Q. When did you first learn that they had been charged to Mr. Garner?

A. Either the 28th of February or the next day—the day of the sale or the next day; I cannot say which it was.

Q. What book did you see them charged on?

A. I saw the regular sales book.

Q. So the first you knew of any sale of goods to Mr. Garner was after the transaction had taken place?

A. So far as I know now; yes, sir.

71 Q. All that you knew of it, then, was by seeing the entry of it on the book?

A. Well, the entry on the book and my helping to get the goods ready.

Q. What help did you render?

A. I helped to pack the goods. Some of them were being opened to see if they corresponded to the entry.

Q. What enabled you to determine to whom the goods were sold?

A. I did not know except from the entry at the time.

Q. That was a day or two days after it had taken place?

A. I think I saw the entry as soon as it was made.

Q. And it was made two days or so afterwards?

A. I don't think it was as much as two days after. It was either the day it was made or the next day. I do not know exactly the hour that the entry was made. I do not know that I was in the store at the moment.

Q. What was the first that you recollect of this transaction between Mr. Graeffe and Mr. Garner?

A. I do not know that I can answer that. I cannot recollect what my first knowledge of it was, except that I did know. That was all.

Q. When you speak of the entry, which book do you refer to?

A. The regular sales book. I never saw this account sales book.

Q. The book which you refer to is the book which was marked Complainant's Exhibit No. 13?

A. Yes, sir; I think that is the book.

Q. Just look at it and satisfy yourself.

A. I suppose that is Mr. Stuart's handwriting. I heard him say here that it was.

Q. And that is the book in which you think you saw the entry?
A. Yes.
Q. You have no doubt of that?
A. No, sir.
Q. And the entry to which Mr. Stuart referred in his testimony is the entry which you saw?
A. Yes, sir.
72 Q. And that is dated the first day of March, 1881?
A. I see it is.
Q. It was either that day or the next?
A. Now, it may be that I knew of it on the 28th of February that I heard of the transaction.
Q. If this entry was made on the first of March, and you learned of it on the day that the entry was made or the day afterwards, it must have been on the first of March or the next day that you learned of the transaction. Is that the fact?
A. I do not know that that entry was made on the first of March. It may have been made before.
Q. By what means do you associate the 28th of February with this transaction?
A. I think I was in a position to know and would remember pretty well a transaction that threatened to put me out of a position.
Q. When did you learn that you would lose your position?
A. I learned that from Mr. Graeffe on the 3d day of March.
Q. And that was the first matter that brought this affair to your attention?
A. Oh, no, sir.
Q. What enables you to fix the 28th of February when anything took place?
A. The charge, I suppose, was made on the 28th of February and my knowledge of the paper which I have produced here, which is dated the 28th of February. At the time that I picked it up it had that date on, and I picked it up a day after it is dated.
Q. You say you picked it up?
A. Yes.
Q. Where did you pick it up?
A. From the floor in the office.
Q. Did Mr. Graeffe give it to you?
A. No, sir; it was a matter of some joking in the store.
Q. You knew it was not yours?
A. Yes.
73 Q. You knew it was in Mr. Graeffe's handwriting?
A. Yes.
Q. And you believed it to be an important paper?
A. No, sir; I did not.
Q. It was of importance enough for you to have kept it ever since?
A. I had it for some time and then put it away.
Q. How came you to pick up that paper and carry it all this time?

Objected to as irrelevant.

A. I could not give you any satisfactory answer why I picked it up.

Q. Are you sure you picked it up the 28th of February or the 29th of February?

A. I suppose it was the next morning after the 28th of February, because I think it was made the afternoon before.

Q. To whom did you show it?

A. To all persons in the store; the two book-keepers, salesmen, etc.

Q. To whom did you first show that paper?

A. I could not say; I showed it to all in the store—Mr. Atterbury, Mr. Stuart, and, I guess, the young men that were there.

Q. Was Mr. Graeffe there?

A. No, sir.

Q. Did you ever tell Mr. Graeffe that you had that paper?

A. No, sir.

Q. How long did you continue in Mr. Graeffe's employ?

A. To the first week in March.

Q. Mr. Graeffe was about the place?

A. Yes.

Q. You never intimated to him you had that paper?

A. No, sir.

Q. To all appearance it looks like a paper that a gentleman might have dropped from his pocket-book?

A. Hardly so; the folding of it is due to my putting it in my pocket-book.

74 Q. Whom did you first show it to after showing it to the book-keepers and people in the office?

A. I cannot say to whom I showed it. The matter was called up in a conversation some time in April or May, 1881, and I think I told Mr. Willcox (complainant's counsel) that I had the paper.

Q. Do you remember of going to Mr. Claflin's?

A. I was sent for to come to Claflin's store.

Q. You showed the paper there?

A. Yes, sir.

Q. You knew Claflin's was a rival house to Mr. Graeffe's?

A. No, sir.

Q. Never heard of any rivalry between them?

A. No, sir; Mr. Graeffe did a different kind of business from Mr. Claflin. Claflin's is a jobbing business, and Graeffe's was a commission business.

Q. Don't you know that Mr. Graeffe also did a jobbing business?

A. No, sir; not in the proper parlance as the word is used.

Q. Can you tell from memory the value of any article of goods in the store on the 28th of February, 1881?

A. I think I could.

Q. Name one of them.

A. Bavaria shawls sold at $1.12½; Princess shawls we had been selling at $1.50, and then within a day or two at $1.37; La Favorita shawls at $1.75; that is what we sold them at a week previous.

Q. Do you remember the names of all the goods you were dealing in?

A. Not all; that is all I can call to mind at the present moment.

Q. But you remembered apparently the prices by simply glancing at the several pages of the book?

A. I saw that the prices marked there were those which I was in the habit of selling at.

Q. Did you compare the entries in the book with the paper you picked up?

A. I never saw that book until to-day.

75 Q. But you saw it while it was in Mr. Graeffe's office?

A. Oh, yes.

Q. Until you came here to-day, you never made an examination of the goods?

A. No, sir.

Q. How many pages of entry did you examine here?

A. I suppose I looked over the whole.

Q. Consisting of twelve pages?

A. Yes, sir; a little more.

Q. How many items on a page?

A. On the first page there are two items which are continued on to the second page.

Q. How long did you take to examine the book when you gave your opinion as to values?

A. A couple of minutes.

Q. Do you know or were you present at any time when Mr. Graeffe made the arrangements with the American Mills Company for the sale of these goods?

A. No, sir.

Q. All that you know about the terms upon which he had them is that the goods were there and they were sold?

A. And that they were consigned by the American Mills Company.

Q. What do you know about the consignment by the American Mills Company?

A. I sometimes helped to check off the goods as they arrived.

Q. The invoices were substantially as stated by Mr. Stuart—a list of the goods shipped by the American Mills Company to Mr. Graeffe?

A. Yes.

Q. You checked off to see that the goods appearing on the invoices were received?

A. I did at times; it was not my business.

Q. That is all you know about the transaction between Mr. Graeffe and the American Mills Company and the nature of it?

76 A. Yes, sir.

Q. Was it any part of your business to go into the office and examine the books?

A. No, sir.

Q. How came you to go into the office and make the examination of the books?

A. I made no examination of the books except the sales book.

Q. How came you to make that?

A. I was salesman and naturally felt an interest in how many goods were being charged and to see that I got credit for those that I sold.

Q. Were you paid by salary or commission?

A. Salary.

Q. So that it was a matter of sentiment rather than a matter of cash for you to examine the books?

A. It was a matter of importance. Mr. Graeffe once mentioned in a conversation that implied I might be put on a commission of two per cent. on sales, and that it might be to my advantage to call it to his mind.

Q. When you went to Claflin & Co., whom did you see on this occasion that you speak of?

A. I saw Mr. Barnes and Mr. Willcox (complainant's counsel).

Q. They were there?

A. Yes.

Redirect:

Q. When did you go to Messrs. Claflin & Co.—about?

A. I think some time in the latter part of April or the fore part of May.

Q. Mr. Graeffe had suspended then?

A. Yes.

Q. Made a general assignment?

A. Yes.

Q. So you could not consider him a rival house to Claflin & Co., if he was not any house at all?

A. I never considered him a rival house.

Q. Mr. Graeffe would naturally sell to Claflin & Co.?

A. Yes, sir.

77 Q. Were you ever told not to examine the books?

A. No, sir.

Q. Never any rule about it?

A. No, sir; not that I know of. No rule ever stated to me. I do not suppose it was understood that we should examine the books.

Q. Was anything ever told you on the subject?

A. No, sir.

Q. You may state where this valuable paper was found when you found it.

A. On the floor of Mr. Graeffe's office.

Q. Apparently been thrown down?

A. Yes.

Q. Why did you pick it up?

A. I cannot tell what possessed me to pick it up.

Q. You knew that these goods that testimony has been given about were made by the American Mills Company?

A. Well, yes. Inasmuch as they were received from the American Mills Company, I suppose they were made by them.

Q. You may state what these consignment blanks were.

A. The blanks were generally headed with the American Mills Company's name, giving the date and so many cases of goods consigned by the American Mills Company to Mr. Graeffe, and a list of the numbers of the cases, together with contents and quantity.

Q. Mr. Graeffe was this consignee?

A. Yes.

Q. Do you know Mr. Atterbury?

A. Yes.

Q. Did not Mr. Atterbury say to you that it was Mr. Graeffe's wish that salesmen should not examine the books?

A. No, sir.

Q. Never told you that?

A. No, sir; never told me that.

Q. When did you see Mr. Atterbury last?

A. The last time I saw him was on the 20th or 21st of March, in the store with the assignee.

78 Q. That is the last time you saw him?

A. Yes.

Counsel for defendants admits that defendant Garner received the goods shown in the entries which have been offered in evidence.

Counsel for defendants admits also that the goods set forth in the exhibits were made by the American Mills Company and by them delivered to the defendant, Albert J. Graeffe.

Counsel for defendants also admits that the amount realized by Mrs. Graeffe from the sale of the goods in question was about thirty thousand dollars, the exact amount to be hereafter supplied.

Complainant offers in evidence certified copy of articles of incorporation of the defendant, The American Mills Company, as follows:

STATE OF NEW YORK, }
County of New York, } ss:

We, Albert J. Graeffe, John C. Shrader, and Edward L. Graeffe, citizens of the United States, residing in the city and county of New York, and also citizens of said State, do by these presents, pursuant to and in conformity with the act of the Legislature of the State of New York passed on the seventeenth day of February, one thousand eight hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts of the said Legislature amendatory thereof, associate ourselves together and form a company under the name and style of American Mills Company, and the following are hereby declared to be—

The corporate name of the said company.

The objects for which the company is formed.

The amount of the capital stock of the said company.

The number of shares of which the said capital stock of the company shall consist.

The term of existence of the company.

79 The number of trustees and their names.

The names of those who shall manage the concerns of the said company for the first year.

The names of the town and county in which the operations of the said company are to be carried on.

1. The corporate name of the said company is hereby declared to be American Mills Company.

2. The objects for which the company is formed are as follows: Manufacturing woolen and cotton goods and goods of mixed fabrics, and disposing of their manufactures, and such business as may be ordinarily and necessarily incident thereto.

3. The capital stock of the said company shall be one hundred and fifty thousand ($150,000) dollars, which shall be divided into one thousand and five hundred shares of one hundred dollars each.

4. The said company shall commence on the second day of May, in the year one thousand eight hundred and eighty, and shall continue in existence for the term of fifty years.

5. The number of trustees shall be three. Their names are Albert J. Graeffe, John C. Schrader, and Edward L. Graeffe.

The names of those who shall manage the concerns of the said company for the first year are Albert J. Graeffe, John C. Schrader, and Edward L. Graeffe; and

6. The name of the town and county in which the operations of the said company are to be carried on are the city and county of New York, in the State of New York, and a portion of the business of said corporation is intended to be carried on at the town of Warwick, in the State of Rhode Island, and the principal part of the business of said company within this State will be transacted at said city and county of New York.

Witness our hands and seals this twenty-fourth day of April, 1880.

ALBERT J. GRAEFFE. [L. S.]
JOHN C. SCHRADER. [L. S.]
EDWARD L. GRAEFFE. [L. S.]

(Duly acknowledged, executed, and filed in the clerk's office of the city and county of New York.)

80 Complainant also offers in evidence a copy of general assignment, pursuant to the laws of the State of New York, by the defendant, Albert J. Graeffe, for the benefit of his creditors, to John C. Gulick, recorded in the clerk's office of the city and county of New York March 3, 1881, and preferring debt stated to be due from the party of the first part to Mary J. Graeffe, amounting at said date to the sum of $17,659.09.

Complainant also offers in evidence copy of general assignment of the defendant, The American Mills Company, recorded in the State of Rhode Island upon March 4, 1881, as follows:

Know all men by these presents that the American Mills Company, a corporation created under the laws of the State of New York and established and doing business in Warwick, in the State of Rhode Island, in consideration of the trusts herein created and of one dollar to said corporation paid by Thomas A. Pierce, Junior,

of East Greenwich, in said State of Rhode Island (the receipt whereof is hereby acknowledged), doth hereby grant, bargain, sell, set over, and assign and convey unto the said Thomas A. Pierce, Jr., all and singular the property and estate of said corporation of every name and nature not exempted from attachment by law in said State of Rhode Island:

To have and to hold the same to the said Thomas A. Pierce, Jr., his heirs and assigns forever, in special trust, nevertheless, and to and for the uses and purposes following—that is to say:

First. The said trustee shall forthwith take possession of all said property and estate and as soon as reasonably may be by private or public sale, in his discretion, convert the same into money, and after paying the expenses of creating and executing the trusts herein made and retaining a reasonable compensation for his services as such trustee, shall apply the proceeds of such sale or sales and of collections of debts due said corporation to the payment of wages of labor performed for said corporation during six months last past, not exceeding one hundred dollars to any one person, claims
81 therefor to be paid ratably and in proportion to their respective amounts if such proceeds be not sufficient to pay all of the same in full.

Second. The said trustee shall apply and pay out all the remainder of the proceeds of said assigned property and estate to and for the equal benefit of all the other creditors of said corporation in proportion to their respective claims; and the said Thomas A. Pierce, Jr., hereby accepts said trust and covenants with said corporation and its creditors faithfully to execute the same.

In witness whereof said corporation doth cause its corporate name to be subscribed and its corporate seal to be affixed hereto, by John C. Schrader and Edward L. Graeffe, two of the trustees of said corporation, and said Pierce hereto sets his hand and seal the fourth day of March, in the year of our Lord eighteen hundred and eighty-one.

Said trustees being duly authorized to make this assignment by vote of said corporation.

THE AMERICAN MILLS COMPANY, [SEAL.]
By JOHN C. SCHRADER, *Trustee.*
EDWARD L. GRAEFFE, *Trustee.*
THOS. A. PIERCE, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
EDWIN METCALF.

Complainant also offers in evidence copy of deed by Albert J. Graeffe to the defendant, William H. Garner, dated March 1, 1881. Same conveys the following-described premises at Warwick, in the State of Rhode Island, in consideration of the sum of $48,910.94:

One piece being described as beginning at the northeast corner of Division and Duane streets, thence running easterly in the northerly line of said Division street two hundred and eight (208) feet to the westerly line of Spring street; thence turning a right angle
82 and running northerly in the westerly line of said Spring street four hundred (400) feet to the southerly line of Greene

street; thence turning a right angle and running westerly in the southerly line of said Greene street two hundred and eight (208) feet to the easterly line of Duane street; thence turning a right angle and running southerly in the easterly line of said Duane street four hundred feet to the point of beginning, and containing eighty-three thousand two hundred (83,200) square feet.

Also that other piece or parcel of land bounded and described as follows: Beginning at the northwest corner of Division and Duane streets, in said town of Warwick, thence running northerly in the westerly line of said Duane street two hundred (200) feet; thence turning a right angle and running westerly in a line parallel with the northerly line of Division street two hundred (200) feet to the easterly line of Marlborough street; thence turning a right angle and running southerly in the easterly line of said Marlborough street two hundred (200) feet to the northerly line of said Division street; thence turning a right angle and running easterly in the northerly line of said Division street two hundred (200) feet to the point or place of beginning, and containing forty thousand (40,000) square feet of land, together with the factory building and structures upon said land and premises, and the boiler and engine and appurtenance in said buildings, and also all the right, title, and interest of the party of the first part of, in, and to the right to take and use and conduct and carry away the water from certain premises in said town of Warwick on land formerly owned by William Clapp, deceased, known as the fountain lot; which rights and privileges are particularly set forth in an indenture bearing date the third day of April, eighteen hundred and eighty, between Mary Clapp and Marcy S. W. Clapp, of said Warwick, of the first part, and said Albert J. Graeffe, of the second part, recorded April eighth, eighteen hundred and eighty, in Warwick, Rhode Island, in Deed Book E, at page 554, together also with all the rights appurtenant for the laying of pipe and conveying said water from the said fountain lot to the
83 lands and premises hereinbefore described, subject to the conditions upon which the said rights and privileges were granted. A portion of the premises hereinbefore described is subject to a mortgage for the payment of the sum of fifteen hundred dollars, and all the subsequent covenants herein contained are to be interpreted and construed as excepting from their operation and effect the said lien and mortgage for fifteen hundred (1,500) dollars.

84 WALTER FLETCHER, called for complainant, testifies as follows:

Direct examination:

Q. What is your business?
A. I am in the dry-goods business; clerk.
Q. What was your business in February, 1881?
A. I was in the shawl business as salesman with A. J. Graeffe.
Q. What was Mr. Graeffe's business?
A. Commission merchant, on Leonard street.
Q. Had you had any previous experience in the shawl business?

A. Yes, sir; had been in that business some eighteen years and a half.

Q. In what capacity?

A. As buyer and salesman with Phelps, Bliss & Co., Eldridge, Dunham & Co., Dunham, Bulkley & Co., and others.

Q. Were you familiar with the market prices of the goods in which Mr. Graeffe dealt?

A. Generally; yes, sir.

Q. You were selling them?

A. Yes.

Q. Will you examine the book now shown you (the sales-book entry) and state whether or not the prices marked there are the prices for which goods of that character were selling?

A. These prices here are what I would say a little lower than the ordinary prices that a concern going along regularly in business would be likely to get for goods of that kind, but if sold in bulk those would be about the prices obtained.

Q. But they are certainly not above the market value?

A. No, sir.

Q. In what line of business was Mr. Graeffe engaged?

A. Sold shawls and quilts on commission.

85 Q. Whose goods did he deal in chiefly?

A. He dealt in goods of the American Mills Company and he had a few quilts that were there, when I went with him, from outside parties—very few. The balance were made up by the American Mills Company.

Cross-examination:

Q. Do you know the terms of the arrangement between Mr. Graeffe and the parties from whom he received goods—that is, the terms of his contract with those parties?

A. No, sir; I had no inside track on the books.

Q. All you knew, then, was from appearances?

A. I knew that he was doing a regular commission business from the fact of his receiving goods and bills of lading and counting the goods to see that they were in accordance with the bills of lading.

Q. Suppose the same process would be gone through with as regards goods sold by the American Mills Company to a merchant—examining the invoices.

A. The goods would then be on a regular bill. As it was, they came on a memorandum bill from the American Mills Company.

Q. It is the paper, then, indicating the transmission of the goods that enables you to determine that they were commission goods?

A. Yes, sir; precisely.

Q. That is all you know about it?

A. Yes, sir; and from general conversations going on in the store.

Redirect:

Q. Mr. Graeffe styled himself commission merchant on his bill-heads and letter-heads?

A. Yes, sir; I think it was on his sign, too, "A. J. Graeffe, commission merchant."

86 Q. Will you state about these blanks which were received with the goods; how did they read?

Objected to as not the best evidence.

A. They would be a mere memorandum bill. For instance, so many goods of such and such a make; Zenobias, so many; Roselinds, so many; Gersters, so many; Floras, so many.

Q. What is the difference between that and a regular bill?

A. A regular bill would be made out in a different form, in my opinion, with the prices carried out—so many goods at such and such prices. On the memorandum bills there are no prices set forth. Of course the prices are known to the house; simply states so many goods of such and such a name. A regular bill, for instance, would state so many Floras at such and such a price, stating the price. These goods sent to Graeffe came on what we term a regular commission memorandum bill from the American Mills Company.

87 *Defendants' Proofs.*

ALBERT J. GRAEFFE, called for defendants, testified as follows:

Direct examination:

Q. You are one of the defendants in this action?

A. Yes, sir.

Q. The defendant, Mary J. Graeffe, is your wife?

A. Yes, sir.

Q. The defendant, William H. Garner, is your wife's brother?

A. Yes, sir.

Q. You know of the property, the personal property, mentioned and described in complainant's bill, the goods mentioned in this bill of complaint?

A. Yes, sir.

Q. You remember of the transfer by you of those goods to William H. Garner?

A. Yes.

Q. At the time of the transfer of the goods to Mr. Garner to whom did they belong?

A. They belonged to me.

Q. State under what circumstances the transfer was made to William H. Garner?

A. I was indebted to Mrs. Graeffe in the sum of about $120,000, as near as I can arrive at it without having my statement here, for moneys that I had collected under power of attorney from her as her trustee from her uncle's estate and from her father's estate, and to pay her part of these moneys that I owed her I transferred to Mr. Garner for her benefit these goods and received therefor a receipt. This was done on account of my obligations to her.

Q. At whose request was the transfer made to Mr. Garner?

A. At Mr. Garner's request.

Q. In what capacity was Mr. Garner acting at that time?

A. He was acting under written authority from Mrs. Graeffe to represent her.

88 Q. Those goods were subsequently transferred to Mrs. Graeffe?

A. Yes, sir.

Q. You have been a merchant for many years in this city and in Philadelphia?

A. Not in Philadelphia, but here I have.

Q. You are familiar with the value of the goods turned over and were familiar with it at the time they were turned over?

A. Yes, sir; perfectly.

Q. What was the value of the goods at the time you transferred them to Mr. Garner on Mrs. Graeffe's behalf?

A. Mr. Garner accepted the goods at about $45,000. I made the prices on the goods myself and he accepted them. It was a very full price for the goods, one which could not have been realized for the goods at that time.

Q. Then the value put upon the goods for the purpose of transfer was the full market value at the time?

A. Yes, sir; it was more than they would have realized at the time, but what we had received for the goods earlier in the season.

Q. But at the time of the transfer they were transferred at their full market value?

A. Yes, sir.

Q. What is the present condition of the accounts between Mrs. Graeffe and yourself?

A. I am still indebted to Mrs. Graeffe in something like a seventeen or eighteen thousand dollars balance. I think that is the amount.

Cross-examination:

Q. You were connected with the American Mills Company?

A. Yes, sir.

Q. And these goods were manufactured by the American Mills Company, were they not?

A. Yes, sir.

89 Q. When was the American Mills Company formed?

A. In the spring of 1880, in the month of April.

Q. Who owned the stock in the company?

A. Myself, my brother, John C. Schrader, and Charles G. Lincoln.

Q. Those were all the stockholders?

A. Yes, sir; all that I can think of.

Q. What was the amount of the stock?

A. The amount of the capital stock was $150,000.

Q. How much paid in?

A. $53,000 or $54,000, I think, was the amount paid in.

Q. What was the proportion paid by each of these persons you have mentioned; what was the amount of stock held by them?

A. I held, I think, $50,000, and the balance was distributed among the three others.

Q. Who were the directors and officers of the company?

A. Mr. Schrader was the president, my brother, Edward L. Graeffe, was the secretary, and I was the treasurer.

Q. And you three were the directors?

A. Yes.

Q. And the only directors?

A. Yes.

Q. Mr. Schrader is related to you in some way?

A. Yes, sir; by marriage.

Q. What is it?

A. He married my sister.

Q. Where did you hold directors' meetings?

A. At the office of the company, in Rhode Island.

Q. How often were they held?

A. Well, they were held—I cannot tell you now, because I have not the minutes. There were provisions made in the by-laws for the time of holding meetings, but we held them, however, when we had any business to transact which was according to our by-laws. We held meetings whenever there was any important business to be brought before the directors.

90 Q. Who managed the affairs of the company?

A. Mr. Schrader and Edward L. Graeffe.

Q. Didn't you, too?

A. In what particular?

Q. What were your relations with the company?

A. I sold the goods.

Q. You sold goods made by them?

A. Yes, sir.

Q. Didn't you manage the affairs of the company with reference to manufacturing and consigning and all that?

A. I took no part in the work in Rhode Island.

Q. Notwithstanding that, you went there to the directors' meetings?

A. Well, that was all.

Q. When was the last meeting held; do you know?

A. I think on the last days of February; I could not give the dates.

Q. Did these gentlemen that you have mentioned continue their connection with the company until it became insolvent?

A. Yes.

Q. You said you sold their goods—you received their goods on consignment and sold them—is that it?

A. The goods were made for me to sell.

Q. They were made by the American Mills Company?

A. Yes, sir; and the Mills Company was very largely indebted to me.

Q. The Mills Company sent them to you and you sold them?

A. Yes, sir.

Q. And you rendered accounts to the American Mills Company?
A. Yes, sir; to show what goods I had sold and what on hand.
Q. You rendered them account sales?
A. Yes.
Q. Monthly?
A. Monthly.
91 Q. And sketch sales?
A. Yes, sir.
Q. How often?
A. Weekly.
Q. You charged a commission on all sales made by you?
A. Yes, sir; and I also charged them for guaranteeing the sales?
Q. You charged a commission and guaranty?
A. Yes, sir.
Q. What were those charges?
A. The charges were, I think, six per cent.
Q. Did that include both commission and guaranty?
A. Yes, sir.
Q. Which was commission and which was guaranty?
A. There was no stipulation. The usual custom is to charge 2½ per cent. commission and 2½ per cent. guaranty, and the one per cent. goes for charges, such as insurance, cartage, etc.
Q. You say these goods belonged to you. Will you say how you acquired title to them?
A. The trustees of the American Mills Company passed the title to me of the goods in order to liquidate somewhat the large amounts that they owed me.
Q. When was that done?
A. In the latter part of February—the last of February.
Q. Do you recollect the date?
A. I think it was on the 28th of February.
Q. How was that arrangement made?
A. It was made at a meeting of all the directors of the company, and they resolved—passed resolutions—to transfer all the goods that were in my hands to me as owner.
Q. Were you present at that meeting?
A. Yes.
Q. Where was it held?
A. At the office of the Mills Company in Rhode Island.
Q. How does it happen that that entry in your account sales is dated the 28th of February?
92 A. It would be natural to enter it then because the company got credit for the amount in the February account.
Q. The entry was made, not on the day that the transfer was made—perhaps on the next day?
A. Well, I do not know what time I got back and gave directions about it, but it is a very common thing, indeed, with all commission houses to make out their accounts several days after the end of the month from a press of work. They enter the account just as soon as it is ready.

Q. But you are quite clear that the resolution was passed on the 28th of February?

A. Yes, sir.

Q. And, then, when did you come back to the city?

A. I came back that afternoon.

Q. I suppose you got to the office the next morning?

A. I cannot say when I did. I may have got here that night.

Q. You voted at the directors' meeting and voted in favor of this resolution?

A. Yes.

Q. Who proposed that arrangement?

A. I did.

Q. To whom?

A. To the directors—the trustees of the company. I told them there was a very large amount of indebtedness due me from the company; that it had been in that condition for a long time and unsettled, and that it seemed impossible to get down the balance of their debit; that I would make a proposition to have the goods in my possession transferred to me as owner and would give the company credit for their value.

Q. Who offered the resolution?

A. I probably did. I cannot say that positively. I may have done so—however one of the others may have done so.

Q. Were there any minutes taken of that meeting?

A. Yes, sir.

Q. Have you the minutes?

93 A. No, sir; it was destroyed in the Morell fire, where I had kept it in a safe. When the safe was opened in Herring's factory everything was destroyed except some little pieces of silver. All the papers in it were destroyed.

Q. The minute book was there?

A. Yes, sir; I believe it was there. I have looked for that book and have applied at Mr. Reed's office and he is certain that I had it. I think I put it in the safe.

Q. Where are the other books of the corporation?

A. They are in the possession of Mr. Schrader and my brother. My brother says he has not got them, but that Mr. Schrader has them.

Q. Is he up in Rhode Island still?

A. No, sir; he is living in New Jersey. I have some of the books in my possession—a box of books that have been sent to me which my brother had in his possession—but he wrote to me that they were not of any importance; all the important books, such as the ledger, cash book, etc., Mr. Schrader has possession of.

Q. This was the first time, as I understand, that such an arrangement had ever been made between you and the company, was it not?

A. Yes.

Q. They never transferred any goods to you before this time?

A. No, sir.

Q. After the corporation was formed no such transfer was ever, at any time, except on the 28th of February, made to you?

A. No, sir.

Q. What was the object making it at this particular time?

A. As I stated before, to reduce the indebtedness they owed me—I think something like $60,000—on my books.

Q. But if the company was to continue business the probability was that they would be able to pay, was it not, if they would continue their consignments every month?

A. I do not know that.

94 Q. Their goods sold freely, did they not?

A. No; not at that time.

Q. The company owed other debts, too; was indebted to other persons besides yourself?

A. Yes, sir; but I was not acquainted with their other debts, except so far as I was joined in them.

Q. Didn't you know that they owed money to parties that had furnished the machinery, and that they were indebted on acceptances that you were on to a large amount?

A. Yes, sir.

Q. You knew they owed a great deal of money besides what they owed to you?

A. Yes, sir.

Q. What was the object of transferring this property to you rather than to any other creditor?

Objected to as immaterial and incompetent by defendant's counsel.

A. They were indebted to this amount of money to me and the officers were perfectly willing to liquidate it as far as they could.

Q. Why didn't you suggest that they should transfer it to their creditors generally?

A. Well, I do not know.

Q. The object was to reduce their indebtedness to you, was it not?

A. Yes.

Q. Did you know that their circumstances were at all weak financially?

A. Well, no; it was not at a moment when I knew exactly how things would turn out. I knew they had to have a good deal of money, and I knew it was necessary for me to furnish more funds to keep them going with.

Q. You knew that they owed more money than their assets would pay, didn't you?

A. No, sir; I didn't.

95 Q. Didn't know if they were called on to pay all these acceptances that were out that their assets would not be sufficient?

A. If they could have realized on all their property they would have paid all their debts.

Q. Including all the acceptances and also taking into view the fact that this property was to go to pay your debt to Mrs. Graeffe?

A. I am not competent to say that they could have paid all their

debts in full, but they were in a very excellent condition if they could have realized a fair value for their assets.

Q. Excluding these very goods?

A. Well, yes.

Q. What assets had they that would pay their debts?

A. They had a very large amount of material on hand manufactured, in process of manufacture, and in a raw condition and very valuable machinery.

Q. What was the material worth that they had on hand, if you know?

A. You mean the machinery and material?

Q. Yes.

A. At the time of their trouble I estimated their assets, machinery and material, to be worth about from $125,000 to $130,000.

Q. Not counting these goods that were transferred to you?

A. Yes, sir; exclusive of those goods.

Q. Do you know what their debts were when they failed?

A. I think they owed about $165,000. I am only speaking from memory.

Q. When did they fail?

A. I think on the fourth of March?

Q. That was four days after this transfer was made?

A. Yes, sir.

Q. And you did not have any idea when the transfer was made that the company was going to fail?

A. It was a question of my ability to furnish them more funds to go on with.

96 Q. And if you could not you thought it would fail?

A. I did not go into that because I had hopes of being able to do something for them until the very last.

Q. Now, you say it was a question whether you could furnish more funds. You mean by that if you could not furnish the funds the company would fail?

A. I do not mean to say that that was a consideration at the time.

Q. What did you mean to say when you said it was a question whether you could furnish them with funds or not?

A. I mean it was impossible for the company to get along unless I backed it.

Q. That unless you furnished them with further funds it could not go on?

A. Exactly, or at any time previously, unless I had furnished the funds it would not have been able to go on as long as it did.

Q. You say the American Mills Company owed you money. Will you state how the indebtedness arose?

A. The indebtedness arose—I paid bills for them for machinery and I also furnished them with cash. I also furnished them with my bills payable.

Q. That is, you accepted their drafts?

A. Yes.

Q. Can you state any bills that you paid for them?

A. Well, my books will show that. I paid a number of bills for them during the fall of 1880. I advanced them money and charged them with the same.

Q. So that any bills you did pay for them will appear on your books—your regular books of account?

A. It should appear there.

Q. How about advances of money; can you recollect any special advance of money that you made?

A. Yes; I know that I sent them cash. I think I sent them money, but I could not tell any dates.

Q. You do not recollect about that?

A. No, sir. I do not know now how I realized money to send them, but I know I borrowed money to help them in former times as well as in later days.

97 Q. If you sent them money, that would also be charged to them in your ledger?

A. Yes, sir; I should think so; it may have been that I realized from the sale of drafts some funds or sent them discount for the same.

Q. In such a case as that the draft would show the amount, would it not, where it would be charged to the Mills Company?

A. I cannot answer as to those questions. I cannot answer these questions intelligently because I do not know exactly.

Q. Can you give any idea of what the amount of bills you paid for them was or what the amount of cash you advanced was?

A. Well, it was all cash originally; was probably all cash originally; that was the foundation of the indebtedness of the company to me.

Q. Can you give any idea of those amounts?

A. No, sir; I cannot.

Q. Any approximate idea?

A. No, sir; I could not. I have no remembrance of it or the dates either.

Q. You do not recollect about how much cash you advanced to them?

A. No, sir.

Q. Was this a part of your contribution to their capital, this cash, bills paid, etc.?

A. No, sir; I think not.

Q. How did you pay in your $50,000?

A. I paid that in —. It was due me when they left Philadelphia—the firm of J. C. Schrader & Co.—for money that I had advanced them.

Q. That is, you advanced money to the partnership of J. C. Schrader & Co.?

A. No, sir; not at all; money that I had loaned them.

Q. Loaned whom?

A. J. C. Schrader & Co.

Q. Then J. C. Schader & Co. owed you $50,000?

A. Yes, sir; they owed me $50,000 for advances and bills I paid for them.

98 Q. Then you formed the American Mills Company?

A. Yes, sir.

Q. How did their indebtedness to you of $50,000 get into the American Mills Company?

A. I took stock for my claim in the Mills Company.

Q. How was that arrangement made?

A. We arranged it in that way; that each member of J. C. Schrader & Co. should take stock for his claim.

Q. Then you never put in any money in the American Mills Company?

A. No, sir; not otherwise than that.

Q. Simply stock was issued to you for a claim which you had against J. C. Schrader & Co.?

A. Yes, sir; I agreed to take stock for the amount of what J. C. Schrader & Co. owed me. We all did that. Each one's share was made up in stock of the Mills Company.

Q. You did not pay in any money at all?

A. No, sir.

By defendants' counsel:

Q. The business of J. C. Schrader & Co. was turned over as the capital of the American Mills Company?

A. Yes, sir; exactly.

By complainant's counsel:

Q. Can you not give me any idea of what the American Mills Company owed you on account of which you took these goods?

A. I say about $60,000.

Q. Was not a portion of that represented by their drafts which you had accepted and discounted and sent them the proceeds?

A. I cannot say that. I imagine so. They drew on me and I accepted their drafts.

Q. And those drafts are a portion of the $60,000 which you say they owed you?

A. Yes, sir.

Q. So that the $60,000 was made up in part of outstanding drafts which have never been paid?

A. Well, some of these drafts that I accepted have not been paid.

99 Q. You have testified that the American Mills Company owed you about $60,000?

A. Yes, sir; I think it was about that amount.

Q. What portion of that, if any, was the proceeds of drafts drawn by the Mills Company on you and accepted by you?

A. That I am not competent to say now. I cannot say without reference to the books.

Q. Will your books show that?

A. They should, I think.

Q. That is, how much of the $60,000 consisted in the proceeds of drafts of the Mills Company on you and accepted by you—your books will show that?

A. I think they should.

Q. How large an amount of drafts was there standing out drawn by the Mills Company on you and accepted by you when you suspended?

A. I think about $89,000 or $90,000.

Q. And those drafts have not been paid?

A. No, sir.

Q. I understand that the habit of the Mills Company was to draw on you and your custom was to accept their drafts?

A. Yes.

Q. And in some cases procured discount and sent them the money?

A. Yes.

Q. Of that $90,000 of acceptances the Mills Company had the avails of a portion, did it not?

A. Oh, yes.

Q. And you had the avails of a part yourself?

A. I believe so; I cannot tell, it is so long ago. I do not know how; the books will show.

Q. Are the books accurate in that respect?

A. I think so; they ought to be.

Q. You say the company owed you about $60,000.

A. I said $60,000 in a round figure. I know in that statement of February there were some sales other than to Mr. Garner which would bring the amount down somewhat.

100 Q. When you say the company owed you $60,000 you include in that the amount of any acceptances the proceeds of which had been used by the Mills Company?

A. No, sir; I do not classify them at all in that way; the only way I classify is that I accepted their paper and they owed me so much money.

Q. How much paper had you accepted?

A. They owed me for all they had had from me. I am speaking with reference to the $60,000.

Q. You think you accepted paper of the Mills Company to the extent of $60,000, and you say of part of that you had the proceeds?

A. I do not understand that question.

Q. You say that they owed you, and that you do not classify it as to paper or as to cash advanced, but that they owed you for cash and for acceptances which you had made and of which they had the proceeds?

A. I mean to say that at the end of every month the balance from the previous month was brought down to the first of the following month as cash so much due me.

Q. And that balance included all acceptances of which they had the proceeds?

A. That included everything which they had had from me, whether it was for cash or any other advances.

Q. Acceptances or anything else?
A. Yes.
Q. As soon as you accepted a draft you charged it to the Mills Company?
A. Yes.
Q. And drafts you accepted would appear as cash and the balance would be a balance in cash?
A. I think that would be it.
Q. How would the acceptances of which you had the avails appear on the books?
A. Well, I do not know how they would appear. I think they were credited to bills-payable account.
Q. And charged to cash?
A. And charged to cash.
Q. They would not be charged to the American Mills Company at all?
101 A. I am not competent to answer that. I have not looked in the books for a long time.
Q. When did the Mills Company suspend payment?
A. They made an assignment, I think, on the 4th of March.
Q. Was that made pursuant to a resolution?
A. Yes, sir.
Q. Were you present then?
A. Yes.
Q. What day was that resolution passed?
A. On the 3d of March.
Q. There were attachments levied before that, were there not?
A. I think there were, but I am not competent to answer that. I am not familiar with the affairs of the Mills Company, and I would not like to state that there were attachments, under oath, as I was not there.
Q. The company furnished a statement to some of its creditors, did it not?
A. That I do not know.
Q. Didn't you furnish a statement to some?
A. I do not know.
Q. Didn't you furnish a statement to the Fourth National Bank?
A. That was not of the company. I was requested by Mr. Baldwin to let him know what I could do with the view of getting a settlement which he would propose to the board of directors, which was to hold a meeting the next day. In accordance with that wish of his I made a statement that I supposed I could carry out, if I could make an arrangement.
Q. When did you do that?
A. I do not remember the date. I suppose the paper will show it. I think it was perhaps along—I cannot say what time it was.
Q. How long do you think it was after the suspension?
A. That would be difficult for me to answer.
Q. Was it a week after the suspension?
A. I could not say that. The bank would be better able
102 to say than I what date it was given, because it was given a

day prior to their meeting. I told Mr. Baldwin that I would go and see my friends and my relatives and those who might be willing to help me, and then I would submit some sort of statement to come before the meeting.

Q. That is the statement, is it not (paper shown witness)?

A. Yes, sir; I think that is mine.

Q. That is in your handwriting?

A. Yes, sir; that was given with the understanding provided I could make these arrangements with my friends; it was not obligatory or binding upon me. It was a proposition merely, and those figures of the Mills Company, I believe, that my brother furnished me with.

Q. That statement was a correct statement, was it not?

A. I do not know. I had no access to the Mills Company's books. I never knew anything about it.

Q. How did your brother come to furnish you with the statement?

A. He probably did so at my request and he may have given me merely a rough sketch.

Q. Did you not make a proposition on behalf of the Mills Company?

A. I do not remember. Whatever I did do on behalf of the Mills Company was done on representations of Mr. Schrader and my brother as to the condition of the Mills Company.

Q. They understood that you were to make a representation, and your brother furnished you with these figures?

A. No, sir; he probably did so at my request.

Q. They understood that you were going to make some proposition of settlement?

A. I do not know that they did.

Q. What did they suppose you wanted the figures for?

A. I might have written them to know what the Mills
103 Company had in assets and what they owed for my own information and satisfaction without telling them what I wanted it for.

Q. Did not you make a proposition to your creditors on behalf of the Mills Company and yourself?

A. I think I did go to some parties—some of the prominent creditors—and endeavored to enter into an arrangement so that I could go on.

Q. Mr. Schrader and your brother both knew of this statement and your proposition?

A. I do not know that they did.

Complainant offers in evidence paper identified by the witness. It is as follows:

Statement of Assets and Liabilities of American Mills Co., Albert J. Graeffe, Jointly.

Liabilities.

Due by American Mills Co.:		
For yarns, machinery, &c.		$71,421 31
For wages to some 250 operatives		6,000 00
For advances made by A. J. Graeffe		9,636 45
Due by A. J. Graffe:		
For accepted drafts of American Mills Co.		91,100 40
To Mary J. Graeffe		17,659 09
To other creditors		3,813 79
		$199,631 04
Less the amount due to Mary J. Graeffe if proposed settlement is successful	$17,659 09	
Less advances to American Mills Co.	9,636 45	
		27,295 54
Total amount of indebtedness		$172,335 50

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Assets.

American Mills Co.:	
Machinery at cost, including shafting	$63,964 20
Material, yarns in gray and dyed, and goods in process, of which a large part are wool fancy shawls that require gigging and fulling and fringe to be made and sewed on to make them salable. These goods will all be desirable for August sales	40,000 00
Gas-house and other construction ac. at cost	8,573 28
Gas and steam pipe fittings at cost	5,298 00
Dye-house fixtures and materials at cost	2,697 86
Wool waste	2,183 16
Fuel ac. at cost	1,073 00
Insurance ac.	555 96
Mill fixtures at cost	1,857 57
Packing-room fixtures and materials at cost	217 87
Carpenter-shop materials at cost	45 95
Tickets on hand for goods at cost	323 28
Mill supplies at cost	696 51
A. J. Graeffe:	
General book accounts	5,352 32
Goods consigned by American Mills Co.	3,148 09
Store and office fixtures	250 00
	136,237 05

Add the amount to be contributed to a new firm in the event the settlement proposed is accomplished ----	25,000 00
Add the real estate, mill property at Warwick, R. I., if settlement is effected----------	50,000 00
	$211,237 05

105 Q. Please look at the paper I now show you and say what the paper is?

A. I do not remember this paper; have no recollection of that paper.

Q. You cannot identify that paper?

A. No, sir; I cannot.

Q. Do you know whose handwriting it is?

A. No, sir.

Q. You do not know who drew it?

A. No, sir.

Q. Do you know whether Mr. Reed drew it?

A. I do not think it is his handwriting.

Q. Is it in the handwriting of any one in his office?

A. That I cannot answer. I do not know.

Said paper is marked "For identification, Complainant's A."

Q. On the paper first shown you to-day appears the item "A. J. Graeffe accepted drafts of the American Mills Company for $91,100.40." Were those the drafts which you have testified which were outstanding?

A. Yes, sir.

Q. How does it happen that you have put down here "Less advances to American Mills Company, $9,636.45"?

A. $60,000 debits and the account sales for February.

Q. I think there was a draft of $1,000 of this amount that was not used?

A. I do not remember anything about that. It is not clear in my mind; but probably my books will show that they may not have used—may have returned the draft.

Q. It was the last one that you sent them?

A. I probably sent the draft to use and they returned it.

Q. Mr. Garner paid nothing on the goods, except the credit of Mrs. Graeffe's claim against you, did he?

A. I do not think he did.

Q. And Mrs. Graeffe did not?

A. I do not remember whether Mr. Garner handed me a dollar or not. There was no substantial payment made.

106 Q. Have you got that receipt? You said there was a receipt executed on account of the transfer by Mrs. Garner or Mrs. Graeffe.

Defendants' counsel stated it was in his possession and he would furnish it at the next meeting.

Q. Do you know whether Mr. Garner knew who made these goods?

A. No, sir; I think not.

Q. Were they not marked on the cases?

A. He did not examine the marks on the cases.

Q. You are sure he did not?

A. I should not suppose that he did.

Q. Was the name of the American Mills Company on the cases?

A. I think there were stencils on the cases.

Q. Did Mr. Garner know what business you were in?

A. He knew I was selling goods.

Q. Did he know what goods you were selling?

A. No; not that I am aware of.

Q. How did he suggest this arrangement to you first? Can you recollect what he said?

A. I could not give the literal language.

Q. Give it as near as you can.

A. He proposed that I should transfer this property.

Q. Can you not recollect what he said a little more definitely than that?

A. I cannot give you the exact language.

Q. What property was it? How did he describe the property?

A. He was speaking in reference to these goods.

Q. Was he at your store when he made the proposition?

A. No, sir.

Q. Where was it made?

A. He came to our place of residence.

Q. How did he know you had any goods to transfer?

A. He asked me.

107 Q. What did he ask you?

A. He asked me what means I had of paying his sister some of this indebtedness.

Q. When did he ask you this?

A. I cannot give you the date.

Q. Was it on the 27th of February or the 1st of March?

A. I cannot say that. I do not remember the date.

Q. You do not remember whether it was before or after the transfer of the American Mills Company to you?

A. Well, I think it was. I can tell by referring to my memorandum. I think it must have been about the 1st of March.

Q. You made the transfer on the 1st of March?

A. I believe so.

Q. Did you make the transfer on the same day that he proposed it?

A. Well, really, I cannot tell you that. I do not remember. I was considerably confused at that time.

Q. Do you recollect what you said to him when he asked you what goods you had you could transfer?

A. No; I do not remember what I told him—what reply I made.

Q. You do not remember how the agreement was made at all?

A. No, sir; I do not remember.

Q. You do not remember what he said and do not remember what you said?

A. I do not recollect the exact language. I only remember the general effect of the convention.

Q. That is your interpretation of the conversation?

A. I know what the general conversation was and what it led to.

Q. Can you not give me either what was said or else the substance of what was said?

A. No; I could not give you any language as coming from Mr. Garner.

Q. Well, the substance, then?

A. As I stated before, Mr. Garner proposed—wanted to
108 know with what I could pay his sister the amount that was due her. I told him that I would transfer such property as I had if she would accept of it in payment of her claim.

Q. Did you tell him what property you had?

A. I believe I did. I must have done so.

Q. What do you think you told him?

A. I told him I had this real estate and had these goods.

Q. That you could transfer those goods?

A. Yes.

Q. You don't know whether the title had become vested in you then?

A. It must have been vested in me. I think this was after my return from Rhode Island.

Q. You think it was after the 28th of February?

A. Yes, sir.

Q. You transferred some real estate to your wife about the same time?

A. Yes, sir.

Q. That was valued at about how much?

A. About $49,000.

Q. And before that you had transferred to her household furniture?

A. Yes.

Q. That was worth how much?

A. Some seven or eight thousand dollars.

Q. When was that transfer made?

A. I could not give the date of it.

Q. Approximately, when?

A. Well, it may have been the 25th of February, or somewhere along there.

Q. Was there any bill of these goods rendered to Mr. Garner?

A. I believe so.

Q. Do you know how they were billed on your regular bill-head?

A. I do not remember that. I only know that directions were given to have them charged in the usual form, in the usual way that I would give orders for charges of any sales.

109 Q. I believe you testified that prior to the transfer of the goods to you the American Mills Company owed you about $60,000.

A. Yes, sir.

Q. And your claim is that the transfer was made on account of the indebtedness of $60,000?

A. Yes, sir.

Q. Can you state now for what the American Mills Company owed you that sum?

A. For advances made to them.

Q. Was it ever for anything except acceptances which were discounted and the proceeds?

A. Yes, sir; it was for money loaned and advances sent them.

Q. In addition to acceptances?

A. As well as acceptances.

Q. Was it in addition?

A. It was not additional to the $60,000. The $60,000 covered their indebtedness to me, as near as I understand it.

Q. Did the $60,000 include such acceptances by you of the drafts of the American Mills Co. as were outstanding when the transfer of goods was made?

A. No, sir.

Q. It did not include them?

A. No.

Q. Did it include any of them?

A. It included some.

Q. This $60,000 includes the amount of such acceptances as were charged to them on your books?

A. Yes, sir.

Q. And the difference between the amount of acceptances charged to them on your books and the $60,000 would be the amount of cash which you claim to have advanced them. Is that it?

A. No; I would not put it that way because I had advanced them money for which they afterwards made drafts. They would say they would require money and there was not time to make drafts, so I would send them money and they would send drafts afterwards.

Q. They would appear in the books?

A. Yes, sir.

110 Q. How much had you advanced them in addition to the acceptances?

A. I sent them altogether $46,076.35 in cash.

Q. Does not that include the proceeds of acceptances which were discounted?

A. Some of it may have been proceeds of acceptances. I am taking the cash which I sent them.

Q. That cash included both the proceeds of acceptances which you discounted and sent them, and also, you say, some cash advances made by yourself otherwise than the result of discounts of acceptances?

A. This cash is not entirely the result of discounts and acceptances, because some of it was for money which I actually sent them.

Q. How much of it was there of cash which you claim you actually sent them?

A. Between eight and nine thousand dollars of cash sent them for which I never received paper.

Q. For all the balance you did receive paper?

A. Yes, sir; I believe so.

Q. I will ask you how many of these acceptances were outstanding when the transfer of the goods was made on the 28th of February?

A. $90,100.40.

Q. Did you ever pay any of those acceptances?

A. No, sir.

Q. Can you state how those acceptances are charged in the books—how they are entered in the books?

A. Which ones do you refer to?

Q. Any of them.

A. When the acceptances were returned to the Mills Company they were charged to them.

Q. They are charged to them and credited to bills payable?

A. Yes, sir.

Q. And the acceptances which were not returned to them—how are they entered?

A. Well, they were charged to cash and credited to bills-payable account.

111 Q. So that as to such as are charged to the Mills Company and credited to bills payable the Mills Company had the proceeds?

A. Yes, sir.

Q. And as to those which are entered in the other way the Mills Company did not have the proceeds?

A. No; it did not.

Q. Can you state how much each of those classes consists of—how they are divided?

A. Yes, sir; I think I can. Of the whole amount of acceptances of $110,588.76 there were returned by me to the Mills Company, and Mr. Schrader, the president, used the same, $36,588.76. I discounted and sent cash to the Mills Company for $38,000, and the Mills Company drew on me and I accepted to meet maturing acceptances in order to continue the accommodation to the Mills Company, $36,000. That makes the whole $110,588.76.

Q. Is that all there were from the beginning?

A. Yes, sir.

Q. Then the proceeds of this last class of acceptances, $36,000, were not sent by you to the Mills Company?

A. No, sir.

Q. I suppose your books are accurate in regard to these things that were done?

A. Yes, sir; I have every reason to believe so.

Q. Now, can you state the acceptances which were outstanding when you suspended, and to which of these classes they belong, first giving us those that you accepted and forwarded the paper?

A. Acceptances No. 4, dated October 11, 1880, $4,000; acceptances No. 5, dated October 12, 1880, $2,000; acceptances No. 9, dated No-

vember 6, 1880, $3,100.40. Acceptance No. 9 went to W. A. Griswold & Co., of Philadelphia, to pay a bill of yarns furnished to the American Mills Company.

112 Acceptance No. 2160, dated Nov. 11, '80 ..... $2,000
" " 2161, " Nov. 12, ... 2,000
" " 2168, " Dec. 2, ... 2,500
" " 2173, " Dec. 17, ... 3,000
" " 2178, " Dec. 10, ... 4,000
" " 2179, " Dec. 16, ... 2,000
" " 2187, " Dec. 21, ... 2,500
" " 2188, " Jan'y 20, '81 3,500
" " 2190, " Dec. 14, '80 ..... 2,988 36
" " 2191, " Feb'y 18, '81 1,000
" " 2192, " Feb'y 25, " 2,000

Q. That comprises all that you accepted, and forwarded the paper?

A. Yes, sir.

Q. State now what drafts were accepted and the proceeds sent to them.

A. Acceptances No. 1, dated Aug. 30, '80 ..... $3,500
" " 2, " Oct. 2, ... 2,500
" " 6, " Oct. 25, ... 2,000
" " 7, " Oct. 28, ... 2,500
" " 8, " Nov. 1, ... 2,500
" " 10, " Nov. 4, ... 2,500
" " 12, " Nov. 8, ... 2,500
" " 2162, " Nov. 13, ... 3,000
" " 2163, " Nov. 19, ... 2,500
" " 2164, " Nov. 25, ... 2,500
" " 2171, " Dec. 11, ... 2,500
" " 2176, " Dec. 27, ... 2,500
" " 2180, " Jan'y 4, '81 3,000
" " 2183, " Jan'y 17, " 3,000
" " 2185, " Jan'y 27, " .....
(On account) 1,000

I sent them on account of acceptance 2185, dated January 27, '81, $1,000. The acceptance was for $3,000.

I should also put this in: That acceptance 2190, dated December 14, 1880, for $2,988.36, which I returned to them and afterwards cashed through a concern here in New York, at six per cent. per annum.

That is all of that class.

113 Q. The next class is those which you did not send the proceeds of? You may state which those were.

A. Acceptance No. 3, dated Oct. 10, '80 ..... $3,500
" " 2165, " Nov. 26, ... 6,500
" " 2167, " Dec. 1, ... 3,000
" " 2170, " Dec. 8, ... 3,000
" " 2172, " Dec. 14, ... 3,000

A. Acceptance No.	2174,	dated	Dec.	20, '80	----------	$3,000
" "	2175,	"	Dec.	23,	----------	3,000
" "	2177,	"	Dec.	30,	----------	3,000
" "	2181,	"	Jan'y	7, '81	----------	3,000
" "	2182,	"	Jan'y	12,	----------	3,000
" "	2185,	"	Jan'y	27,	balance ----	2,000
" "	2186,	"	Jan'y	31,	----------	3,000

That completes the whole thing.

Q. You might state which of these acceptances were paid finally.

A. Nos. 1, 2, 3, 4, 5, 6, and 2190.

Q. By whom were those paid?

A. By me.

Q. Those are all that were paid by you?

A. Yes, sir.

Q. And the remainder of them were not paid?

A. No, sir.

Q. Please give the aggregate amount of those that you paid.

A. $20,488.36.

Q. Those were paid by you out of funds of the Mills Company in your hands?

A. No, sir; I had no funds of the Mills Company in my hands.

Q. Did you not sell their goods and realize funds from them?

A. But they always were in my debt to an amount greater than what I sold.

Q. But you had to credit to them any sales of goods that you made?

A. Yes; but if they owed me a larger balance I would only apply whatever I realized on account; they were always in my debt.

Q. I will ask you with reference to the No. 2193 ac-
114 ceptance which appears on the books. That is the one which was not used?

A. That was an acceptance they asked for and which was sent to them.

Q. But it was not used, as a matter of fact?

A. They did not use it and it is not charged against them.

Q. That is not a part of the $90,100.40?

A. No, sir; it is not.

Q. The amount of $60,000 which you say the Mills Company owed you—was that the balance shown on the ledger account before the transfer of the goods?

A. My ledger shows a debit up to the 28th of February for the month ending February 28th of $66,321.92.

Q. And what is the credit?

A. The credit on the last day of February was $56,170.64, which included sales for the month of February, including the transfer of the goods made to Mr. Garner with other sales.

Q. It included the transfer of the goods to Mr. Garner?

A. Yes, sir; it included that.

Q. And that was the fact as you understand it, of course?

A. Yes, sir.

Q. You have examined your books since the last hearing?

A. I have not examined any of the balances. I have not taken any trial balances. What figures I have taken is what I have found there. I did not look at them at the time of my difficulty, and the books have been out of my possession ever since. I merely took the figures as I find them in the books.

Q. Your books were regularly kept by your book-keepers?

A. I have always supposed they were regularly kept and trial balances rendered to me of them.

Q. This cash that you say you advanced to the American Mills Company, have you any particulars about that a little more definite?

115 A. I have their entire account right here from beginning to end.

Q. Do you remember I showed you a statement which you furnished to Mr. Baldwin, of the Fourth National Bank, being Exhibit No. 20, I think? There the advance to the Mills Company is stated at $9,636.45. Have you any idea how you got at that amount?

A. I believe it is the sum less the balance which then appeared on my books—$10,151.28—before the $1,000 acceptance was canceled. I presume the $9,636.45 alluded to was furnished me by my brother as being the balance shown by the Mills Company's books.

Q. You think it must have come from that?

A. I think so because there is nothing here.

Q. That was the balance, probably, after the credits, including, of course, the transfer of the goods to Garner?

A. Yes, sir.

Q. (Ex. No. 20, Nov. 1, 1882, shown witness.) I call your attention to the item "Due by A. J. Graeffe accepted drafts of the American Mills Company, $91,100.40," and I ask you why you put that down as a liability of yourself rather than of the Mills Company?

A. Because I was submitting my condition of affairs.

Q. Is not the paper headed "Albert J. Graeffe and the American Mills Company" jointly?

A. We were jointly responsible on that paper. I would have to pay. It was only in the event of my inability that they would have to.

Q. Did you not mean that paper as a statement of the liabilities both of yourself and of the American Mills Company?

A. Yes, sir.

Q. Then why did you put that down as a liability of yourself entirely?

A. Because it was a liability of my own entirely.

116 Q. Did you mean that as a statement of the liabilities of the American Mills Company and yourself as between each other?

A. No; together. I wanted to show how much they owed and how much I owed. In showing that I owed $91,100.40 I wanted to show that was my personal responsibility in that statement.

Q. Had you not put down another item of advances made by you to the Mills Company?

A. Oh, no; that was intended to show a balance. That was to show a balance that the Mills Company owed me.

Q. Did not the Mills Company owe you a balance on those acceptances?

A. No.

Q. The Mills Company did not owe you anything on those acceptances?

A. No, sir; they had already been charged with the $91,100.40 or so much as they had had. They did not owe me anything of it.

Q. And for all that the only balance they owed you was the nine thousand and odd dollars on all the transactions?

A. This statement goes to show what the Mills Company owed and what A. J. Graeffe owed. Each one is separate and the total is brought down. The Mills Company were not responsible for the $91,100.40 of acceptances any more than for the money that I owed to Mrs. Graeffe.

Q. On all the transactions all they owed you was the $9,636.45 after all the credits were made?

A. Yes, sir; according to the statement on this paper.

Q. When this transfer was made to you did you expect the company would continue business?

A. I did not enter into that subject at the time. I realized that I would have to support them if they did go on. I did not go into that matter at the time.

Q. You hadn't any opinion or any idea as to whether they would continue business or not?

A. I believed they would.

117 Q. If that was so, what was your particular object in their paying you?

A. Because they owed me this large amount of money and I wanted it reduced.

Q. If they were to continue in business were you not secure enough?

A. No, sir.

Q. You say their continuation in business depended on your helping them?

A. Yes, sir; as it had from the beginning.

Q. Was it your intention to continue assisting them?

A. Yes, sir.

Q. What was your object then in taking all their property?

A. I did not take all their property.

Q. All the goods they had on hand?

A. I did not take all the goods they had on hand.

Q. All the goods they had on hand in New York?

A. Well, that is true.

Q. If you were to continue to aid them, what was the object in taking away the property which they had with you?

A. Because I wanted to reduce the indebtedness as it stood and

have the indebtedness discharged, and I insisted that it should be reduced and they acceded to it.

Q. When did you change your mind about continuing to aid them?

A. I think it was on the evening of the 3d of March.

Q. After you made an assignment yourself?

A. At the time I made the assignment.

Q. Up to the time you made an assignment you thought you would continue to go on and help them?

A. Yes, sir; about up to that time.

Q. If you thought that you were going on helping them why did you transfer all your property on the 1st of March to Garner?

A. Because he came to me and insisted upon my making provision to pay his sister. I have gone through all this evi-
118 dence once before. He called upon me and insisted that I should do something to pay his sister.

Q. And, although you transferred the goods and the real estate and household furniture to Mrs. Graeffe, you still thought you would go on aiding the Mills Company until the 3d of March?

A. I cannot answer that question in that way.

Q. You say your intention was to aid them and that continued up to the 3d of March?

A. My intention was to go on and aid them up to the time I found it impossible to do so—up to the time I found that I was forced to make an assignment myself.

Q. What was your particular object in procuring payment at that time of the balance due from the Mills Company to you?

A. I wanted to reduce this large amount, which had been due for some time.

Q. Was it not your idea, in case they should fail, that you wanted not to lose quite so much by the failure?

A. No, sir; I did not think of that at the time.

Q. That was the effect of the transfer, was it not?

A. That I do not know.

Q. You do not know whether your claim was any less after they turned the goods into you?

A. Of course it was.

Q. Was that not the purpose of making it?

A. No, sir; it was not really the purpose of making it.

Q. When did the company become insolvent?

A. I know they made an assignment on the 4th of March.

Q. Do you know when they became insolvent?

A. I do not.

Q. You know they were insolvent on the 4th of March?

A. They made an assignment on that day.

Q. When was that assignment suggested?

A. On the evening of the 3d of March, I believe.

119 Q. By whom?

A. By the directors of the company.

Q. By whom in the board of directors?

A. By all the directors of the company.

Q. Did not any one man speak first and suggest it?

A. That I am not prepared to say who made the proposition.

Q. You do not recollect?

A. No, sir; I know we came together and had a meeting and the resolution was passed.

Q. Where was it passed?

A. In New York.

Q. And then the assignment was made the next day in Rhode Island?

A. Yes, sir; I believe it was on the 3d of March.

Q. Had there ever been any suggestion of an assignment being necessary prior to the 3d of March?

A. Never been suggested at all. The first I knew of the trouble of the company was that the directors of the company in Rhode Island came to see me in New York and told me that their property had been attached.

Q. Did you not hear anything about it on the 28th of February, when you were up there about any financial difficulty?

A. No, sir; I did not.

Q. When the goods were transferred to you on the 28th of February, was it your intention to turn them over to your wife at that time?

A. I do not remember that it was.

Q. You do not remember when you formed the intention of turning them over to Mrs. Graeffe?

A. I think it was immediately on my return.

Q. On the next day?

A. It may have been that night—the 28th of February.

Q. When did Mr. Garner speak to you about it?

A. He spoke to me when I returned from Rhode Island.

Q. Had he ever spoken to you about it before?

A. I do not think he had. I think it was on my return from Rhode Island.

120 Q. You turned some of your property over to your wife before that?

A. Some; yes, sir.

Q. What was it?

A. Some household furniture.

Q. Was that all that you intended to turn over to her at the time you did it?

A. I do not know that it was. I do not remember the circumstances. The things really belonged to her, but were in my name. She had purchased them, and the transfer was made by her request.

Q. You do not know whether you intended to turn over any other property to her at that time or not?

A. No, sir.

Q. How did you expect to continue to aid the company if you were disposing of your own property?

A. I was not disposing of my own property to any extent.

Q. I ask you if you were doing that how did you expect to continue to aid the company?

A. Well, I was looking for assistance from my friends. I was trying to sell the stock of the company—to induce my friends to go into and buy the stock.

Q. You expect to continue to aid the company by inducing some one to take some of your own stock?

A. No, sir; to take some of the company's stock.

Q. When you had this expectation you knew you were insolvent yourself, did you not?

A. No, sir.

Q. Did you not know you were insolvent then?

A. No, sir.

Q. When did you first learn that?

A. Not until the very last moment.

Q. What do you mean by the last moment?

A. Not until I gave orders to have an assignment drawn.

Q. You learned that on the day when the assignment was made?

A. Yes, sir.

Q. That was on the second of March?

121 A. Yes, sir; on the 2d of March, I believe it was. I was very much confused in my mind. I hardly knew what I was doing. I only knew I was in great trouble and had to do something.

Q. Do you know when the Mills Company did become insolvent?

A. I did not know of any proceeding against them until they came to me.

Q. Do you know whether it was solvent on the 1st of March?

A. No, sir; I did not know. In addition to inducing friends to take stock in the company, I depended on aiding the company upon getting accommodation from the Fourth National Bank. They had been in the habit of giving me accommodation and I went to see Mr. Calhoun. He had heard of this piece of paper of $2,988.66 being in the street because Bennett had been to see him about it, and he refused to give me any more discount. I had had about $33,000 in the Fourth National Bank, I believe it was.

Q. When was this?

A. That was in the month of January. He refused to give me any further accommodation unless I would satisfy the board of directors of the bank how much paper I had out. Of course I did not do it and consequently got no further accommodation from the bank. Between that time and the 28th of February I paid the bank some $8,000 of paper which they had discounted, and to do that I had to borrow money of my wife.

Q. You say you expected further accommodation?

A. Yes, sir.

Q. You mean prior to this interview in January?

A. I expected at the time I went to see him in January that he would discount an amount of paper equivalent of that which was maturing from day to day so as to keep me along.

Q. You did not have such expectation after the transfer of the goods to you?

A. Oh, no; I did not. That was long afterwards.

122 Q. I understand the fact was that at the time of the assignment the total amount of acceptances outstanding was $90,100.40?

A. Yes, sir.

Q. Is it not the fact that the following drafts had been accepted and the paper sent to the American Mills Company?

No.	9,	dated	Nov.	6,	1880	$3,100 40
"	2160,	"	"	11,	"	2,000 00
"	2161,	"	"	12,	"	2,000 00
"	2168,	"	Dec.	2,	"	2,500 00
"	2173,	"	"	17,	"	3,000 00
"	2178,	"	"	10,	"	4,000 00
"	2179,	"	"	16,	"	2,000 00
"	2187,	"	"	21,	"	2,500 00
"	2188,	"	Jan'y	20,	1881	3,500 00
"	2191,	"	Feb'y	18,	"	1,000 00
"	2192,	"	"	25,	"	2,000 00
						$27,600 40

A. That seems to be correct.

Q. And the total amount is $27,600.40?

A. Yes, sir.

Q. With reference to the following acceptances, outstanding at the time of the assignment, the fact is, is it not, that they had been discounted by you and the proceeds sent to the American Mills Company?

No.	7,	dated	Oct.	28,	1880	$2,500
"	8,	"	Nov.	1,	"	2,500
"	10,	"	"	4,	"	2,500
"	12,	"	"	8,	"	2,500
"	2162,	"	"	13,	"	3,000
"	2163,	"	"	19,	"	2,500
"	2164,	"	"	25,	"	2,500
"	2171,	"	Dec.	11,	"	2,500
"	2176,	"	"	27,	"	2,500
"	2180,	"	Jan'y	4,	1881	3,000
"	2183,	"	"	17,	"	3,000
"	2185,	"	"	27,	"	(on account) 1,000
						$30,000

123 A. Yes, sir; that is correct. I believe that to be correct, making in all $30,000.

Q. And the total amount of the two classes is $57,600.40?

A. Yes, sir.

Q. That is the amount of acceptances outstanding at the time of the assignment of which the American Mills Company had either had the paper or its proceeds?

A. Yes, sir.

Q. And those were included in the indebtedness which you say existed prior to the last transfer of the goods?

A. Yes, sir.

Q. And the balance of the $90,100.40 was made up of acceptances by you of drafts of which the American Mills Company had had neither the paper nor its proceeds?

A. Yes, sir; that is so.

Q. Is the following an accurate list of paper of that description?

No. 2165,	dated	Nov.	26,	1880	$3,500	
" 2167,	"	Dec.	1,	"	3,000	
" 2170,	"	"	8,	"	3,000	
" 2172,	"	"	14,	"	3,000	
" 2174,	"	"	20,	"	3,000	
" 2175,	"	"	23,	"	3,000	
" 2177,	"	"	30,	"	3,000	
" 2181,	"	Jan'y	7,	1881	3,000	
" 2182,	"	"	12,	"	3,000	
" 2185,	"	"	27,	"	2,000	balance.
" 2186,	"	"	31,	"	3,000	
					$32,500	

A. Yes, sir; that is a correct list.

Q. The proceeds of these last acceptances were received by you, were they not? This $32,500?

A. Yes, sir.

Q. And you used the proceeds in your business?

A. Yes, sir.

124 Q. You have prepared a statement, have you not, of the transactions between yourself and the American Mills Company?

A. Yes, sir; I have. (Witness produces a paper.)

Q. And that paper includes a statement of all transactions between yourself and the American Mills Company, does it not?

A. No; it is merely a copy of my ledger.

Q. Was it not your custom to put in your ledger what dealings you had with the American Mills Company?

A. Oh, of course that paper covers all the transactions I had with the American Mills Company.

Q. This statement which you have produced covers everything you claim—that is, everything down to the letters "E. and O. E." is taken from your books—from your ledger account of the transactions between yourself and the American Mills Company?

A. That is taken from the account as it appears on the ledger; but the item following the letters "E. and O. E." does not appear on the ledger.

Complainant offers in evidence said paper. It is as follows:

Dr. *The American Mills Company in Account with A. J. Graeffe.* Cr.

1880.					1880.			
May 1	To cash, $62.50, $21.25, $56.25	$140 10		May 1	By cash	$12 69	
" 17	" "	250 00		Sept. 30	" mdse.	1,166 71	
July 15	" " $16.75, Aug't 3d, $1.50	18 25		" "	" interest	54 83	
Aug. 9–31	" " 30c., 22c., 30c., 38c.	1 20					$1,284 28
Sept. 14–30	" " $12.00, 30c., 48c., 40c., 72c., 48c.	14 38		" "	" balance		2,787 65
" 14	" acceptance of American Mills Co., 4 mos. draft No. 1	3,500 00					
" 30	" cash	7 45					
" "	" commission and cartage	90 50					
			$4,021 88				$4,021 88
Oct. 1	To balance forward	$2,787 65		Oct. 12	By cash	5 92	
" 1–30	" cash, 30c., 48c., 30c., 62c., 96c., $2.91, $2.00, $31.69, 72c., 96c., 48c., 48c., 75c., 96c., 88c., 96c., $1.20, 48c., 42c., 96c., 48c., $1.68. $35.50, 96c., 38c., 72c., 72c., $1.44, $1.68, 72c., 72c., $3.00, 30c., 72c., 72c., 51c., 72c.	99 48		" 30	" mdse.	12,490 32	
				" "	" "	3 66	
				" "	" interest	262 50	
							$12,762 40
" 2	" acceptance of American Mills Co., 4 mos. draft No. 2	2,500 00		" "	" balance		23,423 14
" 12	" acceptance of American Mills Co. 4 mos. draft No. 4	4,000 00					
" "	" acceptance of American Mills Co. 4 mos. draft No. 5	2,000 00					
" 26	" mdse.	19,282 12					
" 28	" acceptance of Am. Co. 4 mos. draft No. 6	2,000 00					
" "	" acceptance of Am. Co. 4 mos. draft No. 7	2,500 00					
" 30	" commission	936 77					
" "	" cartage, $14.50; interest, $65.02	79 52					
			$36,185 54				$36,185 54

DR. *The American Mills Company in Account with A. J. Graeffe*—Continued. CR.

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Nov.	1	To balance forward	$23,423 14		Nov.	22	By commission	$1,446 15	
"	1-30	" cash, $39.45, 96c., 96c., 96c., $1.44, 96c., 96c., 96c., $1.20, $1.44, $1.50, 96c., 88c., $1.92, 48c., 30c., $1.68, 55c., $1.44, $1.44, 96c., $1.20, $6.50, $1.20, $1.20, $1.20, 96c., $2.40, $1.68, 96c.	78 70		"	"	" interest	42	
					"	30	" mdse.	8,216 24	
					"	"	" interest	384 66	
									$10,047 14
							" balance		33,639 79
"	1	" acceptance of Am. Co. 4 mos. draft No. 8	2,500 00						
"	6	" acceptance of Am. Co. 4 mos. draft No. 9	3,100 40						
"	10	" mdse., cash 10 days	12 71						
"	"	" acceptance of Am. Co. 4 mos. draft No. 10	2,500 00						
"	"	" acceptance of Am. Co. 4 mos. draft No. 12	2,500 00						
"	12	" acceptance of Am. Co. 4 mos. draft No. 2160	2,000 00						
"	"	" acceptance of Am. Co. 4 mos. draft No. 2161	2,000 00						
"	19	" mdse., cash	2 35						
"	20	" cash	1,683 31						
		Carried forward	$39,800 61				Carried forward		43,686 66
		Amount carried forward	$39,800 61						
Nov.	22	To cash, $64.18, $39.69	103 82						
"	26	" acceptance of Am. Co. 4 mos. draft No. 2162	3,000 00						
"	27	" interest	9 17						
"	30	" mdse., 60 days, $10.00 & 75c.	10 75						
"	"	" commission and cartage	632 72						
"	"	" interest	129 59						
				$43,686 66					$43,686 66

Dec.	1	To balance	$33,636 19		Dec.	11	By bills payable, draft No. 2169	3,000 00	
"	1-31	" cash, $1.44, $1.44, 72c., 72c., $1.20, 96c., 72c., 75c., 96c., $1.20, $5.31, 30c., 25c., $1.20, 30c., 72c., 48c., 72c., 72c., 30c., 30c.	20 71		"	31	" suspense acc't	321 49	
					"	"	" mdse.	10,031 26	
"	2	" acceptance of Am. Co. 4 mos. draft No. 2163	2,500 00		"	"	" interest	361 34	
					"	"	" mdse.	190 65	
"	4-7	" mdse., $4.16, $4.00, $2.40, $9.50	20 06		"	"	" interest	2 03	
									$13,906 77
"	8	" acceptance of Am. Co. 4 mos. draft No. 2164	2,500 00				" balance		40,478 03
"	8	" acceptance of Am. Co. 4 mos. draft No. 2168	2,500 00						
"	"	" acceptance of Am. Co. 4 mos. draft No. 2169	3,000 00						
"	11	" acceptance of Am. Co. 4 mos. draft No. 2178	4,000 00						
"	18	" acceptance of Am. Co. 4 mos. draft No. 2173	3,000 00						
"	"	" acceptance of Am. Co. 4 mos. draft No. 2179	2,000 00						
"	31	" cash	200 00						
"	"	" commission and cartage	761 84						
"	"	" interest	228 70						
"	"	" commission	14 80						
				$54,384 80					$54,384 80

DR. *The American Mills Company in Account with A. J. Graeffe*—Continued. CR.

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1881.				1881.			
Jan'y 1	To balance	$40,478 03		Jan'y 31	By mdse.	8,824 67	
" 1–13	" cash, 30c., $76.71, 72c., 72c., 72c., 32c., 30c., 30c., 48c., 44c., 25c., $5.14 30c., $1.64, 30c., $112.00, 30c., 48c., 72c., 88c., $1.65, 96c., $1.44, 96c., $2.85, $1.62, $2.91, $11.30, $69.91, 54c., $1.20, 36c.	137 94		" "	" interest	297 50	
							$9,122 17
					" balance		50,411 61
" 4	" acceptance of Am. Co. 4 mos. draft No. 2176	2,500 00					
" 17	" cash paid Am. Co. sight draft	4,000 00					
" 19	" acceptance of Am. Co. 4 mos. draft No. 2171	2,500 00					
" 28	" acceptance of Am. Co. 4 mos. draft No. 2187	2,500 00					
" "	" acceptance of Am. Co. 4 mos. draft No. 2188	3,500 00					
" "	" acceptance of Am. Co. 4 mos. draft No. 2190	2,988 36					
" 31	" commission and cartage	676 35					
" "	" interest	275 71					
			$59,556 39				$59,556 39
Feb'y 1	To balance carried forward	$50,411 61					

		Amount carried forward	50,411 61					
Feb'y	1-28	To cash, 80c., 32c., 35c., $1.40, $2.45, 36c., $2.80, $1.75, 35c., $2.45, $12.00, 32c., $9.80, $3.85, $2.10, $2.10, $60.06, $4.20, $1.40, $3.35, $2.17, $1.61, $2.55, $3.68	122 16		Feb'y 28	By mdse. carried forward	55,892 46	
					" "	" interest	278 18	
					" "	" bills payable, draft No. 2193	1,000 00	
"	2	" acceptance of Am. Co. 4 mos. draft No. 2180	3,000 00					$57,170 64
						" balance		9,151 28
"	11	" acceptance of Am. Co. 4 mos. draft No. 2183	3,000 00					
"	19	" acceptance of Am. Co. 4 mos. draft No. 2191	1,000 00					
"	25	" cash on Feb'y 14th	1,000 00					
"	26	" acceptance of Am. Co. 4 mos. draft No. 2192	2,000 00					
"	"	" acceptance of Am. Co. 4 mos. draft No. 2193	1,000 00					
"	28	" commission and cartage	4,209 43					
"	"	" interest	418 29					
"	"	" cash bill of Feb'y 19th	160 43					
				$66,321 92				$66,321 92
M'ch	1	To balance as per ledger	$9,151 28					

THE AMERICAN MILLS CO., N. AL.

130 Q. In that account is included the $57,600.40 acceptances that you have testified to as being the two schedules first stated to-day?

A. Yes, sir.

Q. But the $32,500 last stated is not included in the account just put in evidence?

A. No, sir.

Q. That paper was all outstanding at the time of your failure?

A. Yes, sir; it was all outstanding against me.

Q. And this $66,321.92 balance which you testified to the other day includes, I suppose, the $57,600.40 acceptances, and the balance is a balance arising from cash advances and charges?

A. Yes, sir; that is a balance of the account.

Q. When did the American Mills Company become insolvent?

A. The first I knew of it was when they notified me within a day or two of their assignment that there had been an attachment put on the property. I think it was on the very day that they made the assignment they came to New York and told me that there had been an attachment put on the property.

Q. And that, you think, was the day the assignment was made?

A. I think it was the day before. I think it was on the 3d they came to New York and told me of it. I think they made the assignment on the 4th of March.

Q. Do you know whether it was solvent up to that time?

A. If I could furnish them with funds they were.

By defendant's counsel:

Q. Did they have property enough to pay all their debts?

A. No; I think not—not in full without my help.

Q. And they were still indebted to you?

A. Oh, no; they were not solvent.

By complainant's counsel:

Q. Without your help—by which I understand you mean accepting their accommodation paper—without that up to what time were they solvent?

131 A. I should have to ascertain first what their assets were; how much they had up to the time they were unable to pay.

Q. Your view of it is they were solvent up to the time that that attachment was put on the property?

A. Yes, sir; according to my understanding of the word.

Q. Up to that time you think they were solvent, and that they then became insolvent by their failure to make payment of bills presented?

A. Exactly. That is the way I look upon it.

Q. Do you think for a month prior to that, if all their property had been realized upon, they could have paid all they owed?

A. That would depend upon what the property would have brought.

Q. I refer to the fair market value.

A. Well, I considered the plant a valuable one.

Q. What I mean is this: If you had not loaned them money on credit for a month prior to that could they have paid their debts with what property they had?

A. No, sir.

Q. But they depended on your aid?

A. Yes, sir.

Q. The effect of the transfer of the goods by the company to you was to pay your debt, to the exclusion of other creditors, was it not?

A. Yes, sir.

Q. And was not that the effect which was intended to be accomplished when the thing was proposed?

A. No, sir.

Q. It was not?

A. No, sir; it was not.

Q. Did you not know then that unless you continued to aid them they would have to stop?

A. I knew that, of course.

Q. Who proposed to the directors of the American Mills Company that the transfer should be made to you of this property in New York?

A. I probably proposed it.

Q. If you did, do you recollect whether you stated any special reason for making it at that time?

132 A. I said that they owed me a very large amount of money, and that I was anxious to have the indebtedness reduced; that they did not seem to be able to send goods enough forward to me so as to reduce it in that way, and the transfer was the result.

Q. Did they make any comment on the proposition at all?

A. No, sir; they said they thought it was a very fair and just one.

Q. Did they all vote on it?

A. Yes, sir.

Q. All voted in the affirmative?

A. Yes, sir.

Q. This meeting was held on the 28th of February in Providence, as I understand?

A. It was held on that day at East Greenwich.

Q. And then the resolution was passed of the transfer to you?

A. Yes, sir.

Q. And then you returned to the city of New York?

A. Yes, sir.

Q. And on the 1st of March the thing was actually carried out, the transfer made to you, and by you to Mr. Garner?

A. Yes, sir.

Q. And then on the 3d of March you think the officers of the company came down and stated to you that they were in difficulty; that an attachment had been levied?

A. Yes, sir.

Q. And was there a meeting of the directors then?

A. Yes, sir.

Q. And the assignment was authorized?
A. Yes, sir; and the assignment was resolved upon.
Q. And that was made the next day in Rhode Island?
A. Yes, sir.
Q. Did you go on there?
A. No, sir; I did not; they returned.

133 Q. You made a statement in your former examination that the Mills Company owed about $165,000. Do you remember that?
A. If I made that statement I believe that is correct.
Q. Does that include their indebtedness to you?
A. Yes, sir.
Q. To what extent?
A. I am not prepared to answer that question.
Q. Was that before the goods were turned over to you or afterwards?
A. That must have been afterwards. I am not really qualified to answer as to the American Mills Company's affairs.
Q. Was this what they owed after their assignment?
A. Yes, sir; I believe so.
Q. You stated quite early in the course of your examination that you acted as the consignee for the Mills Company. Were the goods transferred on the 28th of February received on consignment similarly to the goods which you said you generally received on consignment from them?
A. I believe so. I believe they all were; there was a large number of goods transferred from J. C. Schrader & Co., of Philadelphia.
Q. You took them as consignee of the American Mills Company?
A. Well, they were in my hands and I transferred them to the account of the American Mills Company.
Q. I think you stated the terms on which you took consignments?
A. I think it was six per cent.
Q. And that was for commissions, guaranty, and charges?
A. I believe so.
Q. When this transfer was made to Garner did he make any payment for the goods?
A. I believe not.
Q. Did Mrs. Graeffe pay anything for them otherwise than by crediting, I mean?
A. No.

134 Q. Did she keep any account in which the credit was made or was it expressed in writing in any way what the amount of the credit was?
A. She did by giving me a receipt.
Q. Is that the receipt that you testified to before that Mr. Garner gave you or is it another paper?
A. I do not remember how that was arranged, but there are papers to show the transactions.
Q. Will you please produce any receipt or receipts of that kind that you may have?
A. I will.

Q. Do you know whether Mr. Garner and Mrs. Graeffe knew who made the goods?

Objected to.

A. I do not know what they knew.
Q. Did you ever tell them?
A. I have no recollection of telling them.
Q. Did either of them ever say anything in your presence about it?
A. I do not remember.
Q. You say there were stencils on the cases; that was the fact?
A. Yes, sir; I think on all of them.
Q. What were the stencil marks?
A. A. J. Graeffe and the number of the street.
Q. Merely the address and number of the street?
A. Yes, sir.
Q. Were there no other marks?
A. Not on the cases except the case number.
Q. Is that all?
A. I think that is all.
Q. Was there a bill rendered to Mr. Garner?
A. I believe so.
Q. Have you any recollection of how the goods were described on the bill?
A. I imagine just as they were in the sales book.

Defendants' counsel states he thinks he has the bill and will produce the same.

Q. The American Mills Company did not owe anything to Mrs. Graeffe?

A. She had no direct dealings with them, of course not.
135 The moneys that I had borrowed of her I had used to advance to the American Mills Company.

Q. But her dealings were direct with you?
A. Yes, sir.
Q. How much stock in the Mills Company did J. C. Schrader hold?
A. I believe some twenty and odd shares.
Q. And your brother how much?
A. I believe three shares.
Q. And you held how much?
A. Five hundred shares I believe I had.
Q. And the par was $100?
A. Yes, sir; $100.
Q. Is the property described in the deed which has been offered in evidence, Exhibit 19, that upon which the American Mills were situated?
A. Yes, sir; it is.

Defendant's counsel produces upon the call of complainant the following papers:

Bill of sale from American Mills Company to Albert J. Graeffe, dated Feb. 28, 1881.

Bill of sale from Albert J. Graeffe to William H. Garner, dated March 1, 1881.

Bill of sale from William H. Garner to Mary J. Graeffe, dated March —, 1881.

Agreement between Mary J. Graeffe, William H. Garner, and Albert J. Graeffe, dated March 1, 1881.

Redirect examination:

Q. Was your business exclusively that of commission merchant?

A. No, sir; not exclusively.

Q. What else did you do besides commission business?

A. I bought goods outright.

Q. Bought and sold goods on your own account?

A. Yes, sir.

Q. In your dealings with the American Mills Company did you or did you not guarantee the sales made by you?

136 A. Yes, sir; in all instances.

Q. And what was the custom as between yourself and the American Mills Company as to charging you for the goods delivered to you—as they were delivered?

A. At the end of every month they charged me with the goods that I had sold for the current month.

Q. In the meantime what was done about the goods that were sent you as to charging the goods?

A. They were sent to me on consignment until I sold them and then they charged them against me.

Q. Did you always sell the goods for cash or for credit at times?

A. I sold on credit.

Q. And when a sale was made you charged yourself and credited the company with the amount of the sale?

A. Yes, sir.

Q. What was your custom in your dealings with the American Mills Company as to advances to the company?

A. I advanced the money and they sent me the goods as security for those advances; that was between the time of the receipt of the goods and their charge to me of the goods.

Q. In the statement which has been shown you, being "Complainant's Exhibit 20, of Nov. 1st, 1882," and also marked "Ex. A, of Oct. 28, 1881," I find a charge against the American Mills Company in your favor of advances made by A. J. Graeffe, $9,636.45. Was that a gross sum of advances or was it a net amount after making deductions of any kind?

A. That was a balance that the American Mills Company owed me after I credited to them all the sales up to the time of my failure, according to their showing.

Q. You mean taking their showing as correct?

A. Yes, sir; taking their showing as correct.

Q. In striking the balance of $9,636.45 had you given the Ameri-

can Mills Company credit for the goods which were turned over to you on the 28th of February, 1881?

A. Yes, sir.

137 Q. You were asked on your cross-examination as to when the American Mills Company, so far as you know, became insolvent. Can you fix the date when, as you understood, the Mills Company became insolvent?

A. They became insolvent on my suspension on the 3d of March.

Q. Prior to that time had the Mills Company been solvent?

A. Yes, sir.

Q. What made the change of solvency to insolvency, as you understood it?

A. Because I made my assignment on the 3d of March, and the company became liable for the acceptances.

Q. Prior to that time what was the condition of the company in respect to property which it had, and the liabilities of the company itself, as to whether they had enough property to pay all their debts at a fair market value or not enough prior to your failure?

A. Up to the time of my failure, the American Mills Company had about $130,000 of assets and their liabilities were about from $80,000 to $85,000.

Q. And in the statement to which your attention has just been called (being the statement made by you to complainant), in referring to the liabilities, what do you include besides the liabilities of the American Mills Company proper?

A. I include their debt to me.

Q. You include their debt to you?

A. Yes, sir; as embraced in that $80,000 to $85,000.

Q. But in making the one hundred and ninety thousand and some odd dollars do you cover anything more than the indebtedness of the American Mills Company, or do you include your own indebtedness upon which they were contingently liable?

A. Yes, sir; exactly that.

Q. How were they contingently liable upon your indebtedness? State the facts as to that.

A. Their liability to the extent of $165,000 was after my suspension on the 3d of March, 1881, when they became liable for all these acceptances.

138 Q. That is, your failure to pay the acceptances made them liable upon the drafts which they had drawn against you?

A. Yes, sir.

Q. As I understand, up to that time you considered the company solvent?

A. Perfectly so.

Q. And able to pay all their debts?

A. Perfectly so. I figured that they had forty or fifty thousand dollars beyond their debts in assets.

Q. When you speak on your cross-examination of the company being solvent or insolvent, depending on your ability to help them, what do you mean?

A. I mean, while they had a very large amount of property, it was

not convenient for them to turn it into cash to pay current bills, and for the payment of those current bills they were depending upon me for advances of money.

Q. And you had been in the habit, as I understand it, of making advances to them from time to time as goods were delivered to you?

A. Yes, sir.

Q. At the time of the transfer by you of the goods in question to Mr. Garner in whose possession were the goods?

A. In my possession.

Q. Had you at that time or at any time made known to Mr. Garner the circumstances or conditions under which the goods came into your possession or became yours?

A. Not that I am aware of.

Q. Had you, at any time, made known to Mrs. Graeffe the circumstances under which the goods came into your possession or the nature of your title to them?

A. Not that I know of.

Q. Where were the goods at the time of the transfer by you to Mr. Garner?

A. In my store.

Q. Between the time of the first suggestion of the transfer
139 of the goods to Mr. Garner and the time of the actual transfer to him was there any examination of the goods by any one?

A. Yes, sir; Mr. Garner examined the goods very carefully before he agreed to take them. He examined a sample case of every kind and class of goods.

Q. These advances that you made from time to time to the American Mills Company—from whom did you obtain the moneys?

Objected to as irrelevant and immaterial and incompetent.

A. From Mrs. Graeffe.

Q. Had you any means of your own other than the moneys that you obtained from her from time to time?

Same objections.

A. No, sir.

Q. When you speak on your cross-examination of the American Mills Company being able to proceed with its business provided it could obtain moneys from you, from what source did you expect or contemplate getting the moneys to aid the American Mills Company?

Same objections.

A. From Mrs. Graeffe.

Q. Had there been anything said by or on behalf of Mrs. Graeffe as to the condition upon which she would make further advances for such purpose?

Same objections.

A. There was a very large amount of money due her at that time

and the understanding was that if she could feel that she would be repaid these moneys—that some or all of the money which I had borrowed from her could be repaid to her—she would be willing to renew the loans to me or to give me help in the future.

Complainant's counsel moves to strike out the answer on the same grounds on which the objections are based.

140 Q. When did you first learn that an attachment had been issued against the American Mills Company?

A. My present recollection is when they called upon me in New York on the 3d of March, 1881.

WILLIAM H. GARNER, called for defendants, testifies as follows:

Direct examination:

Q. You are one of the defendants in this action?

A. Yes, sir.

Q. Do you know Mary J. Graeffe?

A. Yes, sir.

Q. You are related to her, are you not?

A. Yes.

Q. You are her brother, are you not?

A. Yes.

Q. Do you remember the transfer of some goods by Albert J. Graeffe through you to Mary J. Graeffe in or about the latter part of February or the early part of March, 1881?

A. I remember the circumstances. I do not remember the date without looking at a memorandum that I have.

Q. State the circumstances under which that transfer came to be made, so far as you know.

A. At or about that time Mr. Graeffe came to me for financial assistance—for money—and I did not feel able to help him at the time. I then asked him what had become of my sister's money. I was unable to give him any assistance, and I went to see my sister and asked her what had become of her money, and I understood from her that her husband had the control of it—had it. I told her that I had reason to believe that he was in financial trouble and that I thought she ought to be secured. She asked me to act for her in having her secured and gave me authority to do so.

Q. Under that authority what did you do?

141 A. She told me that a part of her money was invested in some mill property down in Rhode Island that Mr. Graeffe had bought with the promise and understanding to put the deeds in her name, and she asked me to see if it had been done, and, if not, to see that it was done. I went to Mr. Graeffe and I learned that the deeds had been taken out in his name.

Q. Please state about the transfer of these dry goods. You say you got authority from Mrs. Graeffe and that you went to see Mr. Graeffe? Now, state what took place.

A. Well, there was a transfer of some goods.

Q. Who suggested that a transfer of the dry goods should be made?

A. I did, if I recollect correctly.

Q. Did you ask Mr. Graeffe either to pay or to secure Mrs. Graeffe?

A. I did.

Q. In reply to that what did he say; did he say anything about his inability?

A. He was unable to pay.

Q. What did he say to you that led you to believe that he was unable to pay?

A. He told me—he showed me dry goods.

Q. Did he say to you, "I have not the money" or "I have not any security?"

A. I certainly understood him to that effect. I do not recollect the exact conversation.

Q. What was there that was said by him or the substance of what was said by him that induced you to consider the question of taking dry goods?

A. I understood from him that he was unable to pay—that he had those goods, and so far could secure the claim.

Q. Where were the goods?

A. They were in his warehouse, in his store.

Q. Did you examine them?

A. Yes, sir.

Q. Do you recollect how many packages you examined?

A. No, sir; I recollect examining quite a number of packages of what are known in the trade—well, I have forgotten the
142 technical term. At any rate, they had not been opened, but were just as they came from the mill.

Q. You were familiar with dry goods?

A. I had been in the dry-goods business for several years, but I was not at that time nor have I been since.

Q. Between the time of the suggestion by Mr. Graeffe that he would turn over these goods and the time of the actual transfer what interval elapsed?

A. It was either the same day or the next day, if my recollection serves me, that the actual transfer took place.

Q. How did you agree, if at all, with Mr. Graeffe as to the price at which the goods were to be taken?

A. I took them by the book value—that is, according to his books.

Q. You saw his books?

A. I saw some of his books.

Q. The goods were then transferred to you, were they?

A. Yes, sir.

Q. And by you transferred to Mrs. Graeffe?

A. Yes, sir.

Q. You had personally no interest in the goods other than that?

A. I merely acted for my sister.

Q. Did you know before that what your sister's resources had been?

A. I knew what they had been and what they ought to be.

Q. What amount of money or property had she had, in round numbers?

A. About $125,000, I should say, speaking roughly.

Q. Derived from what sources?

A. Part from her father's estate and part from her uncle's estate.

Q. Upon the receipt of these goods did you execute any paper?

A. I think I gave a receipt.

143 Cross-examination:

Q. I understand Mr. Graeffe made the suggestion that the goods should be transferred?

A. I do not know that I am prepared to consider it so. Mr. Graeffe gave me to understand, if I may put it in that way, that he was unable to pay Mrs. Graeffe what he owed her, and that all he had was these goods, and I demanded that he should secure her with those goods, if he was unable to do otherwise, to give anything more tangible.

Q. And that, you think, was on the day when he transferred them to you?

A. It was either that same day or the next day.

Q. That the transfer was made?

A. Yes.

Q. You say you saw some of his books. Do you know which ones?

A. I am not enough of a book-keeper to say that, but I think I saw a book—I don't know what it is called—but which showed the number of packages that are received from the mill or manufacturer, showing what goods were in stock, if I make myself clear.

Q. Did you receive the proceeds of these goods?

A. Some of these goods were sold and the proceeds handed to my sister.

Q. Did you not receive the proceeds of some that were sold which passed through your hands?

A. I am not clear of that. I perhaps did, though, and yet I do not recollect having received any. It might be put before me that I had received some money which I passed over.

Q. They were sold through a salesman named Bowen?

A. They were sold through Bowen.

Q. You do not remember whether he paid you any money at any time?

A. I do not recollect; he might have.

Q. Have you any idea what they realized?

A. I do not recollect; several thousand dollars.

144 Q. $20,000 or $30,000?

A. They were sold somewhere near the book value, but they did not bring as much as I took them for.

Q. What did you understand Mr. Graeffe's business to be?

A. Dry-goods commission.

Q. Did you know for whom he sold on commission?
A. I did not.
Q. Did you not know who made these goods?
A. His books showed it, as I recollect it.
Q. His books showed they were made by whom? Do you remember?
A. I think some of them were made by a mill in Rhode Island. I think the American Mills Company.
Q. Were not they all made by the American Mills Company?
A. I cannot say.
Q. Do you remember any that were made by anybody else?
A. No, sir. I knew he was in the dry-goods commission business and I knew that he had other accounts.
Q. Did he say anything to you about his title to the goods?
A. He did.
Q. What did he say?
A. That he bought them—that is, they belonged to him.
Q. Did he tell you when he bought them?
A. No; from time to time, in different months.
Q. Said he bought them at different times?
A. Yes, sir; I understood so.

Redirect:

Q. After the goods had been transferred to you what did you do with them? Did you allow them to remain there or did you remove them?
A. I had them immediately removed to a regular storehouse, where I had to pay storage.
Q. And after that whatever you did in the matter was as agent of your sister?
A. Yes, sir.

145 Recross:

Q. What was done with the goods finally?
A. I know some were sold.
Q. Do you not know what became of them if you were acting as Mrs. Graeffe's agent in the matter?
A. No; I do not.
Q. Were they not all sold?
A. I have every reason to believe they were, but I do not know.
Q. Who had charge of them after they were removed from the warehouse?
A. This salesman.
Q. He accounted directly to Mrs. Graeffe?
A. If my recollection serves me, yes; although he may have accounted to me in part; if so, I accounted to her immediately.

MARY J. GRAEFFE, called for defendants, testifies as follows:

Direct examination:

Q. Are you one of the defendants in this case?
A. I am.

Q. You inherited, I understand, some property from your father and uncle, did you not?

A. Yes, sir; I did.

Q. Can you give about the amount?

A. Well, no; but I can swear it was more than $100,000.

Q. Do you know what became of that property—how it was used?

A. No; I never took any care of it. I know that some of it was used for the purchase of some real estate at East Greenwich. I know from time to time Mr. Graeffe, in his business, borrowed some money from me and always returned it with interest.

Q. Did you know what business your money went into? What business was Mr. Graeffe connected with at the time he borrowed the money?

A. He was in the manufacturing business. You know he
146 commenced that business, and he was in the dry-goods business in this city. He went into the manufacturing business and bought that property at East Greenwich, the American Mills property.

Q. These moneys were loaned for the purpose of conducting the business of the American Mills Company?

A. Yes, sir; I never questioned Mr. Graeffe about it. I always understood that it was all right; that when he bought this property it was to be mine, of course, because my money paid for it—that is, the real estate. In fact, everything that he used my money for was to be security for the money I let him have.

Q. I want to bring you down to shortly before the 1st of March, 1881. Did you have any conversation with Mr. Graeffe as to the condition of your funds that he had received from you?

A. Yes, sir.

Q. What did you say to Mr. Graeffe in reference to your funds?

Objected to as immaterial and irrelevant.

A. I asked him if my moneys were all right and intact. I do not remember the conversation, but I remember having some words about it and his not giving me any very straightforward answer. I know I asked my brother after that conversation. I don't remember exactly what the conversation was.

Q. I understand, then, that you received no satisfactory answer from Mr. Graeffe as to what had become of the money?

A. No; I did not.

Q. After you had this conversation with Mr. Graeffe, did you consult with any one in respect to it?

A. Nobody but my brother.

Q. Your brother was William H. Garner?

A. Yes, sir.

Q. And did you give your brother authority to act for you?

A. I wrote to him and asked him to take care of my affairs.
147 Q. Do you know what was done in the way of securing your money to you?

A. No further than that the property was mine, and that my brother said that he had secured me some goods.

Q. But you do not know the amount?

A. No, sir; I do not; never heard that I remember of.

Q. Did Mr. Graeffe have at his disposal or under his control the entire fortune that was left you by your father and your uncle?

A. Everything.

Q. And down to the present time the only returns that have been made to you that you know of are this real estate in East Greenwich and the goods that your brother spoke to you about?

A. That is all.

Cross-examination:

Q. When did your brother speak to you about these goods first?

A. I think it was just before the failure, if I recollect.

Q. Do you recollect what he said?

A. I asked him to take care of me and my money and do the best he could. He said he would.

Q. I mean what he said about the goods.

A. He said that there were some goods that he would take, and when I saw my husband he said that my brother had taken them.

Q. Did he not describe the goods in any way?

A. No, sir; not at all; I did not know what they were. I do not know what style of goods they were. I only know they were mill goods.

Q. What do you mean by mill goods?

A. I mean that it was property he had in his store—shawls, dry goods, or things of that sort.

Q. Did you understand that the goods had been made at this mill in Rhode Island?

148 A. I do not know whether they were made in Rhode Island or in Philadelphia or by other consignors. I only know that it was property which he had and which my brother had seized or taken possession of?

Q. That is all you can recollect about the taking of the goods?

A. Yes, sir; I do not remember much about it. I know that I wrote my brother and asked him to come and see me and he did. He asked me if this mill property was in my name. He told me he would help me in any way he could, and would take charge of the matter and would do the best he could for me.

Q. But that is all you recollect about the goods?

A. That is all I remember.

Q. You are quite sure there is nothing else that you remember about it?

A. I do not remember anything else. I left it in his hands.

Q. You have received money from the sale of these goods, have you not?

A. Yes, sir; I suppose so.

Q. Who did receive this money for you?

A. My husband took charge of all my affairs.

Q. Since he has failed as well as before?

A. Well, my brother did for a time. I suppose my husband took charge of my affairs after Mr. Garner gave it up.

Q. Who has received these proceeds for you?

A. Well, my brother did first; then I think the matter was put in Mr. Thain's hands. I know I never have seen the money.

Q. Do you not know who has received the proceeds of the goods which were yours, as you say?

A. Well, my husband has taken charge of my affairs.

By DEFENDANT'S COUNSEL: After the goods were sold do you know who sold them and who got the proceeds in the first instance?

A. I understood my brother did, of course.

By complainant's counsel:

Q. Did he not pay them to you?

A. Personally hand me the proceeds?

149 Q. Yes.

A. No, sir; not that I remember.

Q. To whom did he pay them?

A. I think to John C. Gulick.

Q. You think that the proceeds were paid to Mr. Gulick?

A. I think so. Mr. Gulick had at that time moneys of mine; and I know that my brother had to sell the goods, and that he employed a salesman.

Q. To whom did the salesman account?

A. To Mr. Garner. He gave his account to Mr. Garner.

It is admitted that a receiver of the defendant corporation was on or about February 5, 1883, appointed by the supreme court of the State of New York in and for the city and county of New York, in an action brought pursuant to sect. 784 of the Code of Civil Procedure, and that such receiver has duly qualified.

It is hereby admitted, for the purposes of the trial of this cause, as follows:

I. Excluding any indebtedness of the American Mills Company to Albert J. Graeffe, the Mills Company was upon March 1, 1881, indebted for yarns, machinery, wages, &c., in the sum of $77,421.31, and was liable, in addition, upon drafts drawn by it and accepted by said Graeffe, but never paid by him, in the further sum of $90,100.40, making in all $167,521.71.

II. Excluding the goods transferred upon March 1, 1881, at the price of $45,064.50, from the Mills Company to Graeffe, the American Mills Company had upon that day no assets other than the following:

Material at cost	$63,946 20
Material—yarns and goods in process of manufacture	40,000 00
Gas-house and other construction accounts at cost	8,573 38
Gas and steam pipe fittings at cost	5,298 00
Dye-house fixtures and materials at cost	2,697 86
Wool waste	2,183 16
Fuel account at cost	1,073 00
150 Insurance account	555 96
Mill fixtures at cost	1,857 57
Packing-room fixtures and materials at cost	217 87

Carpenter shop at cost	$45 95
Tickets on hand for goods at cost	323 28
Mill supplies at cost	696 51
Total	$127,486 64

III. Upon March 1, 1881, an attachment for $5,000 was levied in Rhode Island upon the personal property of the American Mills Company. Further attachments were afterward there levied upon all of the personal property of said company. The attachments so levied up to and including March 12, 1881, amount to over $65,000. Judgments were thereafter perfected on these claims and all of the personal property of the American Mills Company within the State of Rhode Island was sold on execution of said judgments for an amount considerably less than the judgments. The Mills Company had other liabilities in addition, amounting to a large sum, which still remain unpaid.

IV. During the month of March, 1881, judgments were docketed in the clerk's office of the city and county of New York against the American Mills Company amounting to more than $8,500. Thereafter and prior to July 1, 1881, additional judgments were so docketed amounting to more than $22,000. No part of any of said judgments has ever been paid, and the same remain and are now wholly unsatisfied.

V. The defendant, Mary J. Graeffe, received from the sale of the goods transferred by the defendant, Albert J. Graeffe, to the defendant, William H. Garner, and described in the bill of complaint herein, the sumof $32,500.

ALEX. THAIN,
Survivor of Bagley & Thain, Attorneys for Defendants.

Proofs closed.

151 United States Circuit Court, Southern District of New York.

THE FOURTH NATIONAL BANK, Complainant,
vs.
AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, MARY J. GRAEFFE, & O'rs, Defendants.

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York*, } *ss:*

I hereby certify that, before me, Carsten Wendt, a notary public duly authorized to act in and for the county of New York, at my office, No. 20 Nassau street, in the city, county, and State of New York, personally appeared, on the 25th of September, 1882, George E. Stuart, Wilbur F. Calvert, and Walter Fletcher; on November 1, 1882, and on Oct. 4, 10, and November 9th, 1883, Albert J. Graeffe; on Nov. 30th, 1883, William H. Garner, and on January 10,
152 1884, Mary J. Graeffe, as witnesses in the above-entitled cause, pursuant to the stipulation herein, filed June 9th, 1886, and the said witnesses, being by me first duly cautioned and sworn to

testify the whole truth, and being carefully examined, deposed and said as appears by the depositions filed in this court, together with the pleadings and exhibits in this cause, on the 9th day of June, 1886.

In testimony whereof I have hereunto set my hand and official seal this 18th day of October, 1886.

[L. S.] CARSTEN WENDT,
Notary Public, Kings County.

Cert. filed in New York county.

Endorsed: U. S. circuit court. Fourth National Bank *vs.*
153 American Mills Co. and others. Examiner's certf. U. S. circuit court. Filed Oct. 19th, 1886. Timothy Griffith, clerk.

154 U. S. Circuit Court, Southern District of New York.

FOURTH NATIONAL BANK OF THE CITY OF NEW YORK
vs.
THE AMERICAN MILLS COMPANY and Others. } In Equity.

David Willcox, for complainant; Alex. Thian, for defendants Graeffe and another; Samuel W. Bowen, for defendants American Mills Co. and others.

COX, *J.:*

The complainant is a national banking association. The defendant, The American Mill Company, was, at the time in question, a manufacturing corporation organized under the laws of New York having its principal office in the city of New York and its manufactory at Warwick, in the State of Rhode Island. The defend-
155 ant, Albert J. Graeffe, was treasurer and a trustee of this company and the commission merchant in New York to whom its goods were consigned. On the twenty-eighth of February, 1881, Graeffe had in his possession merchandise of the company in value about $45,000. He had, prior to this time, accepted for the benefit of the company its drafts drawn upon him against the consignments for upwards of $50,000. Other acceptances, amounting to $32,500, had been used by Graeffe personally in his business without advantage to the Mills Company. None of the drafts, whether used by Graeffe or the company, were due on the twenty-eighth of February. On that day the company transferred to Graeffe as absolute owner the goods in his possession, he taking them in discharge *pro tanto* of the company's indebtedness to him. On the following day Graeffe sold the goods to his wife, Mary J. Graeffe,
156 for $45,064, in part payment of a debt due from him to her. The sale was made through her agent, the defendant Garner.

On the third of March Graeffe made a general assignment for the benefit of his creditors. The Mills Company failed at the same time. On the thirtieth of March, 1881, the complainant recovered a judgment against the Mills Company and Graeffe for $2,533.84 in the supreme court of the State of New York, and on the twenty-second of June, 1881, it recovered another judgment against the

same parties for $18,224 in the court of common pleas of the city of New York. Executions issued upon these judgments were returned *nulla bona* September 1, 1881. Subsequent to the failure and before July 1, 1881, other judgments were obtained against the company in New York and Rhode Island for over $70,000.

157 The complainant now seeks to recover from Mary J. Graeffe the amount due upon its judgments upon the theory that she is indebted to the Mills Company for the value of the goods, the transfer to her being, it is alleged, without consideration and constructively fraudulent. No accusation of actual fraud is made against any of the defendants. It is not disputed that there was a *bona fide* indebtedness from the defendant Graeffe to his wife of over $100,000. This being true, he had undoubtedly a strict legal right, if he owned the goods, to transfer them to her in payment, although the propriety of such a proceeding upon the eve of bankruptcy may well be doubted. The important question, therefore, and practically the only question to be determined is, did the Mills Company, on the twenty-eighth of February, prior to

158 the transfer, have any tangible interest in the goods out of which the complainant could have made its debt? Did the transfer in any way injure the complainant?

In determining this question, in deciding what the parties could and could not do, attention should be directed, not to subsequent events, but to the situation as it existed upon and prior to the twenty-eighth of February, 1881. On that day the defendant Graeffe had in his possession goods consigned to him by the Mills Company under a *del credere* commission, the market value of which was about $45,000. His books show that he had advanced as against these goods by cash and acceptances a sum considerably in excess of their value—about $54,000. For this sum he had a valid

159 lien. When, therefore, the bill of sale was given the Mills Company held the legal title, but it was valueless. The goods were incumbered for more than they were worth. They could not have been disposed of except with this charge upon them. A creditor of the Mills Company, by taking the goods in execution, could not have divested the lien. When the parties met the Mills Company recognized the lien, and admitting liability in excess of the security passed the title to Graeffe. He received no preference or advantage. He acquired no rights that the law would not have given him. It was, in effect, agreeing to a foreclosure of the lien without the expense and delay of legal proceedings.

Assuming, as it seems to be assumed, that there was in all this no actual fraud, why was it not a legitimate transaction; why

160 was it not a disposition of the property which the parties, if they desired to do so, had a legal right to make? If the Mills Company had only a contingent interest in the goods it would seem a harsh and inequitable use of the doctrine of merger to hold that, because Graeffe received the bill of sale, which was, perhaps, technically illegal, he therefore lost his lien, and by this inconsequential mistake the complainant is to receive $20,000, which it could receive in no other way. It is true that Graeffe, instead of

securing his wife, should have paid the joint indebtedness. It is not easy, however, to perceive how his failure in this regard can avail the complainant.

But it is denied that the lien amounted to the value of the goods. On the contrary, it is asserted that it amounted only to
161 $21,715, and this for the reason that Graeffe had used other drafts of the Mills Company, amounting to $32,500, for his own personal benefit, and as between themselves the company was under obligations to discharge a net balance of acceptances amounting to $21,715 and no more. The views of counsel are so at variance upon this proposition that the record has been searched for a rational explanation of this somewhat abnormal transaction, but with only partial success.

The acceptances involved do not appear upon Graeffe's books in his account with the Mills Company. At one time he asserts that the proceeds were received by him and used in his business; at another his testimony would indicate that they were used to meet maturing acceptances in order to continue the accommoda-
162 tions to the Mills Company. The motives which actuated the parties, the terms of the agreement under which these drafts were used by Graeffe, and the considerations therefor are not satisfactorily explained. It seems, however, that it was a separate and distinct transaction, and was so regarded by the parties. As between themselves, fair dealing would seem to demand that they should have made an agreement in the form stated by the complainant; but, on the contrary, Graeffe, being liable to pay $54,000 received by the Mills Company, was not called upon, unless he desired to do so, to release his security or any portion thereof, because the company was liable to pay $32,500 of acceptances of which he had had the exclusive benefit. Instead of demanding any concessions from him in this respect, the company expressly recognized his claim for the full amount. It is true that he might have relinquished
163 a part of his security, quite likely he ought to have done so, but the lien which the law gave him he chose to retain, and the company acquiesced in his action in this regard. The transaction was unilateral, but not unlawful.

The case is a difficult one in many of its aspects, but the conclusion cannot be resisted that the complainant is without relief in this action.

The bill is dismissed.

[Endorsed:] U. S. circuit court. Filed Jan'y 18th, 1887. Timothy Griffith, clerk.

164 United States Circuit Court, Southern District of New York.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK
vs.
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, MARY J. GRAEFFE, *et al.*

Memorandum on Motion for Rehearing.

David Willcox, for the complainant; Alexander Thain, for the

defendants, Mary J. Graeffe and William H. Garner; Samuel W. Bower, for the defendants, The American Mills Company, Albert J. Graeffe, and William H. Bowen.

COXE, *J.:*

I have re-examined this cause in the light of the supplemental briefs submitted by counsel and see no reason to change the views heretofore expressed. The arguments presented at the final
165 hearing are now reasserted with perhaps greater emphasis, but not with greater clearness, for the complainant's position was then most concisely stated. No new theory is advanced, no additional proposition of law is suggested. The former decision was reached after considerable time and thought had been devoted to the subject and after all the arguments now presented had been fully considered. With every disposition to aid the complainant, the conviction that it was without relief could not be resisted. The complainant is not satisfied with the decision; but, as I understand the moving papers, it is not contended that anything involving the substance of the controversy has been overlooked. The trial court may have taken an erroneous view of the law, but the remedy for such error is an appeal. The case
166 is not brought within the rule which authorizes a reargument. If the complainant were in a position to invoke the strictest rules of equity against the defendants; if it were able to enforce for its benefit alone all the rights which belong to all of the creditors and to each class of creditors; if it could obtain a preference by virtue of a statute designed to prevent preferences and divest a lien which for certain purposes concededly existed; if it could take by this action what it could not have obtained if the acts complained of had not taken place, the path to success would be less difficult. But the complainant does not and cannot occupy such a position. The conclusion formerly reached, that the relief prayed for cannot be granted in an action of this character, must
167 be adhered to. The motion is denied.

(Endorsed:) United States circuit court, southern district of New York. The Fourth National Bank of the City of New York *vs.* The American Mills Company *et al.* Decision. Coxe, J. U. S. circuit court. Filed Mar. 9th, 1887. Timothy Griffith, clerk.

168 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court and post-office building, in the city of New York, on the 16th day of March, in the year one thousand eight hundred and eighty-seven.

Present: The Hon. Alfred C. Coxe, judge.

Between—

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,
and
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. Garner, Mary J. Graeffe, and William H. Bowen, Defendants.

This cause coming on to be heard on the application of the
169 complainant for a rehearing on the pleadings and proofs heretofore taken, it is, after hearing David Willcox, Esq., of counsel for complainant, in favor of the motion, and Samuel W. Bower, Esq., of counsel for the defendants, The American Mills Company, Albert J. Graeffe, and William H. Bowen, and Mr. Thain, of counsel for the defendants, Mary J. Graeffe and William H. Garner, opposed—

Ordered that said motion be, and the same is hereby, denied.

ALFRED C. COXE.

GENTLEMEN: Please take notice that the foregoing proposed order will be this day mailed to Judge Coxe, at Utica, for his fiat.

Dated New York, March 14th, 1887.

Yours, &c.,

ALEX. THAIN,
Solicitor for Defendants, Mary J. Graeffe, &c.

170 To Bristow, Peet & Opdyke, Esqs., solicitor- for complainant; Samuel W. Bower, Esq., solicitor for defendants, The American Mills Company, &c.

Endorsed: U. S. circuit court. The Fourth National Bank of the City of New York, complainant, and The American Mills Co. and others, defendants. Order denying motion for rehearing. Alex. Thain, attorney for Mary J. Graeffe, &c. U. S. circuit court. Filed Mar. 17th, 1887. Timothy Griffith, clerk.

171 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court and post-office building, in the city of New York, on the 16th day of March, in the year one thousand eight hundred and eighty-seven.

Present: The Hon. Alfred C. Coxe, judge.

Between—

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,
and
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. Garner, Mary J. Graeffe, and William H. Bowen, Defendants.

172 This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, and this court, by virtue of

the power and authority therein vested, doth order, adjudge, and decree, that the complainant's bill of complaint herein be dismissed on the merits as to the defendants, Mary J. Graeffe and William H. Garner, appearing by Alexander Thain, their solicitor, and that said bill of complaint be also dismissed on the merits as to the defendants, Albert J. Graeffe and William H. Bowen, appearing by their solicitor, Samuel W. Bower; and it is further ordered, adjudged, and decreed that the said complainant pay to the defendants, Mary J. Graeffe and William H. Garner, their costs of this suit to
173 be taxed, and that the said complainant pay to the defendants, Albert J. Graeffe and William H. Bowen, their costs of this suit to be taxed, and that the said defendants have execution for such costs against the complainant.

ALFRED C. COXE.

GENTLEMEN: Please take notice that the foregoing order for judgment herein will be this day mailed to Judge Coxe, at Utica, for directions as to the entry thereof.

Dated New York, March 14th, 1887.

Yours, &c.,

ALEX. THAIN,
Solicitor for Defendants, Mary J. Graeffe, &c.

To Bristow, Peet & Opdyke, Esq-., solicitors for complainant; Samuel W. Bower, Esq., solicitor for defendants, The American Mills Company, &c.

174 (Endorsed:) U. S. circuit court. The Fourth National Bank of the City of New York, complainant, and The American Mills Co. and others, defendants. Final decree. Alex. Thain, attorney for Mary J. Graeffe, No. 11 Pine St., New York city. U. S. circuit court. Filed Mar. 17th, 1887. Timothy Griffith, clerk.

175 And the costs having been taxed by the clerk in favor of the defendants, Mary J. Graeffe and William H. Garner, at one hundred and five $\frac{97}{100}$ dollars ($105.97) and in favor of the defendants, American Mills Company, Albert J. Graeffe, and William H. Bowen, at forty-four $\frac{47}{100}$ dollars ($44.47) *dollars*, the process, pleadings, and decrees, together with other papers filed in said cause, are duly annexed hereunto.

Wherefore let the said Mary J. Graeffe and William H. Garner recover of said The Fourth National Bank of the City of New York the sum of one hundred and five $\frac{97}{100}$ dollars ($105.97) and the said American Mills Company, Albert J. Graeffe, and William H. Bowen recover of said The Fourth National Bank of the City of New York the sum of forty-four $\frac{47}{100}$ dollars ($44.47), as adjudged in said final decree, the costs and charges as taxed.

Signed and enrolled this seventeenth day of May, A. D. 1887.

JOHN A. SHIELDS,
Deputy Clerk.

176 [Endorsed:] United States circuit court, southern district of New York. The Fourth National Bank of the City of New York *vs.* The American Mills Company *et al.* In equity.

Final record. Alex. Thain, sol'r for def'ts, Mary J. Graeffe and Wm. H. Garner. Samuel W. Bower, solicitor for def'ts, American Mills Co., Albert J. Graeffe, and William H. Bowen. Costs, $105.97 & 44.47. U. S. circuit court. Filed May 17, 1887, 2 p. m. Timothy Griffith, clerk.

177 Circuit Court of the United States, Southern District of New York. In Equity.

Between—

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,
and
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. Garner, Mary J. Graeffe, and William H. Bowen, Defendants.

To the honorable the Supreme Court of the United States:

The appeal of The Fourth National Bank of the City of New York, the above-named complainant and appellant, respectfully shows:

I. That upon December 3, 1881, the complainant filed in the office of the clerk of the circuit court of the United States its bill of complaint alleging, among other things, that on or about March 30, 1881, the complainant duly recovered a judgment at law against the defendants, The American Mills Company and Albert J. Graeffe, for $2,533.84, and on or about May 31, 1881, duly recovered a judgment at law against the said defendants for $18,224, and that executions upon said judgment were issued in due form to the sheriff of the city and county of New York, and were returned wholly unsatisfied and remain wholly unpaid; that for a considerable time prior to and during the month of February, 1881, the de-

178 fendant, The American Mills Company, was in the habit of consigning to the defendant, Albert J. Graeffe, goods, wares, and merchandise for sale by him on commission on account of the said Mills Company; that in February, 1881, the said Graeffe had on hand a large amount of goods so consigned; that on or about February 28, 1881, the said Graeffe made certain entries in his books of account purporting to constitute a sale of the said goods, wares, and merchandise to himself for the sum of about $46,000; that he paid no consideration therefor and did not become the owner thereof; that on or about March 31, 1881, the said Graeffe made certain other entries in his books purporting to constitute a sale of said goods, wares, and merchandise then in his possession from himself, the said Albert J. Graeffe, as owner, to the defendant, William H. Garner, and said Garner thereupon took possession of the same; that said Garner paid no consideration or value whatever for said goods and received the same with full knowledge of the manner in which they came into the hands of the said Graeffe; that said Garner claims that he received the same on behalf of the defendant. Mary J. Graeffe, and that said goods, wares, and merchandise had been delivered to him by the said defendant Graeffe on account of an

indebtedness alleged to be due from said Graeffe to the defendant, Mary J. Graeffe; that thereafter said Garner employed the defendant, William H. Bowen, to sell the said goods, wares, and merchandise, and said Bowen did sell a large portion thereof, and said Garner and Bowen have collected a large sum of money for and on account of the said goods, wares, and merchandise, and have paid over
179 a considerable part of the money so collected to the defendant, Mary J. Graeffe; that said Mary J. Graeffe received the same with the full knowledge that the said goods, wares, and merchandise were the property of the defendant, The American Mills Company, and of all the facts in reference thereto; but, nevertheless, has appropriated to her own use such portions of said goods, wares, and merchandise as have come into her hands, and that by reason of such disposition of said goods, wares, and merchandise the same have been removed from the reach of any executions at law, and complainant's judgments remain wholly unpaid; and the said bill of complaint prayed that the proceeds of said goods, wares, and merchandise should be subjected to the payment of complainant's said judgments.

II. That upon February 3, 1882, the defendant, William H. Garner, filed his separate answer to said bill of complaint, denying that said transfers were without consideration or were unlawful in any respect, and alleging that the same were made for a valuable consideration, viz., for and on account of an indebtedness by the said Mills Company to said Graeffe and by said Albert J. Graeffe to Mary J. Graeffe.

III. That upon February 3, 1882, the defendant, Mary J. Graeffe, filed her separate answer to said bill of complaint, denying that the said transfers were without consideration or were unlawful in any respect and alleging that the same were made for a valuable consideration, viz., for and on account of an indebtedness by the said Mills Company to the said Albert J. Graeffe and by the said
180 Albert J. Greffe to the said Mary J. Graeffe.

IV. That upon February 25, 1882, the defendants, Albert J. Graeffe and William H. Bowen and The American Mills Company, filed their joint and several answer to said bill of complaint, alleging that said transfer was for a valuable consideration by said Graeffe to said Mills Co., namely, for and on account of an indebtedness by the said company to said Graeffe, and also for a valuable consideration by the said Mary J. Graeffe to said Albert J. Graeffe, namely for and on account of an indebtedness by her to him for moneys loaned and advanced; and the said answer denied that such indebtedness was without consideration or was unlawful in any respect.

V. That upon March 4, 1882, the complainant filed its separate replications to said answers of the defendants, and thereafter the testimony on behalf of complainant and defendant was duly taken, and on October 29, 1886, the cause came on for final hearing at a stated term of the circuit court of the United States for the southern district of New York and was argued, and that on March 17, 1887,

a decision was had thereon and the following decree entered in the office of the clerk of the said circuit court as follows:

"At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court and post-office building, in the city of New York, on the 16th day of March, in the year one thousand eight hun-
181 dred and eighty seven—

Present: The Hon. Alfred C. Coxe, judge.

Between—

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant,
and
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. GARNER, MARY J. GRAEFFE, and WILLIAM H. BOWEN, Defendants.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the complainant's bill of complaint herein be dismissed on the merits as to the defendants, Mary J. Graeffe and William H. Garner, appearing by Alexander Thain, their solicitor, and that said bill of complaint be also dismissed on the merits as to the defendants, Albert J. Graeffe and William H. Bowen, appearing by their solicitor, Samuel W. Bower.

And it is further ordered, adjudged, and decreed that the said complainant pay to the defendants, Mary J. Graeffe and William H. Garner, their costs of this suit to be taxed, and that the said complainant pay to the defendants, Albert J. Graeffe and William H. Bowen, their costs of this suit to be taxed, and that the said defendants have execution for such costs against the complainant.

ALFRED C. COXE."

182 VI. That on May 17, 1887, the costs of the defendants, Mary J. Graeffe and William H. Garner, pursuant to said decree, were taxed by the clerk of said circuit court at one hundred and five $\frac{97}{100}$ dollars, and the costs of the defendants, The American Mills Company, Albert J. Graeffe, and William H. Bowen, at forty-four $\frac{47}{100}$ dollars, and judgments entered therefor.

Wherefore the above-named complainant and appellant appeals from the whole of said decree and from the judgments entered thereon for said costs of said circuit court to the Supreme Court of the United States, and respectfully prays that the pleadings, depositions, evidence, and proofs in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may

be reversed, and such other decree made as to the said Supreme Court shall seem just.

THE FOURTH NAT. BANK OF THE CITY OF NEW YORK,
[BANK SEAL.] By O. D. BALDWIN, *Pres.*

BRISTOW, PEET & OPDYKE,
Of Counsel, 20 *Nassau Street*, *New York*, *N. Y.*

The above appeal is hereby allowed.
Dated N. Y., May 20th, 1887.

ADDISON BROWN.

183 [Endorsed :] Circuit court of the United States, southern district of New York. In equity. Between The Fourth National Bank of the City of New York, complainant, and The American Mills Company and others, defendants. Petition and appeal. Bristow, Peet & Opdyke, attorneys for complainants, No. 20 Nassau street, New York, N. Y. Due service of a copy of the within is hereby admitted. Dated May 21, 1887. Samuel W. Bower, sol. for def'ts, American Mills Co., Albert J. Graeffe, and William H. Bowen. Alex. Thain, sol. for def'ts, Mary J. Graeffe and William H. Garner. U. S. circuit court. Filed May 25, 1887. Timothy Griffith, clerk.

184 Circuit Court of the United States, Southern District of New York. In Equity.

Between—

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Complainant, and THE AMERICAN MILLS COMPANY, ALBERT J. Graeffe, William H. Garner, Mary J. Graeffe, and William H. Bowen, Defendants. } Bond for Damages and Costs.

Know all men by these presents that we, The Fourth National Bank of the City of New York and Octavius D. Baldwin, of No. 33 West 38th street, in the city, county, and State of New York, and Henry Buckhout, of No. 156 West 132nd street, in the city, county, and State of New York, are held and firmly bound unto the above-named The American Mills Company, Albert J. Graeffe,
185 William H. Garner, Mary J. Graeffe, and William H. Bowen in the sum of two hundred and fifty dollars, to be paid to the said The American Mills Company, Albert J. Graeffe, William H. Garner, Mary J. Graeffe, and William H. Bowen ; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 19th day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas the above-named The Fourth National Bank of the City of New York hath prosecuted its appeal to the Supreme Court of

the United States to adverse the final decree rendered in the
186 above-entitled suit by a judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named The Fourth National Bank of the City of New York shall prosecute its said plea to effect and answer all damages and costs if it fail to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE FOURTH NAT'L BANK OF THE CITY OF NEW YORK,
By O. D. BALDWIN, *Pres.*
[Seal of Bank.]

O. D. BALDWIN. [L. S.]
H. BUCKHOUT. [L. S.]

Sealed and delivered and taken and acknowledged this 19th day of May, 1887, before me—
JOHN H. MANN,
[L. S.] *Notary Public* (235), *New York County.*

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

187 Octavius D. Baldwin, being duly sworn, doth depose and say that he is one of the obligors named in the foregoing bond; that he is a resident of the above-named southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

O. D. BALDWIN.

Sworn to before me this 19th day of May, 1887.
JOHN H. MANN,
[L. S.] *Notary Public* (235), *New York County.*

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Henry Buckhout, being duly sworn, doth depose and say that he is one of the obligors named in the foregoing bond; that he is a resident of the above-named southern district of New York,
188 and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

HENRY BUCKHOUT.

Sworn to before me this 19th day of May, 1887.
JOHN H. MANN,
[L. S.] *Notary Public* (235), *New York County.*

I hereby approve the foregoing bond, its manner of execution, and the sufficiency of the sureties thereto.
Dated New York, May 20th, 1887.

A. BROWN.

(Endorsed:) Circuit court of the United States, southern district of New York. In equity. Between The Fourth National Bank of the City of New York, complainant, and The American Mills Company and others, defendants. Bond for damages and costs.
189 Bristow, Peet & Opdyke, attorneys for complainant, No. 20 Nassau street, New York, N. Y. U. S. circuit court. Filed May 20th, 1887. Timothy Griffith, clerk.

190 UNITED STATES OF AMERICA, *ss:*

To the American Mills Company, Albert J. Graeffe, William H. Garner, Mary J. Graeffe, and William H. Bowen, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1887, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein The Fourth National Bank of the City of New York is complainant and appellant and you are defendants and respondents, to show cause, if any there be, why the final decree in said appeal mentioned should not be reversed and corrected and speedy justice should not be done to the parties in that behalf.

Dated New York, May 20th, 1887.

ADDISON BROWN.

191 [Endorsed:] U. S. Supreme Court. The Fourth National Bank of the City of New York, complainants, against The American Mills Company and others, defendants. Copy. Citation. Bristow, Peet & Opdyke, attorneys for complainants, No. 20 Nassau street, New York, N. Y. Due service of a copy of the within citation is hereby admitted. Dated N. Y., May 21, 1887. Samuel W. Bower, sol'r for def't, Am. M'lls Co., Albert J. Graeffe, and W. H. Bowen. Alex. Thain, sol'r for def'ts, Mary J. Graeffe and William H. Garner. U. S. circuit court. Filed May 23, 1887. Timothy Griffith, clerk.

192 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and ninety-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Fourth National Bank of the City of New York, complainant & appellant, against The American Mills Company, Albert J. Graeffe, William H. Garner, Mary J. Graeffe, and William H. Bowen, defendants & appellees, as the same remain of record and on file in said office.

Seal of the U. S. Circuit Court, South. Dis. of New York.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 18th day of July, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and twelfth.

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 352. The Fourth National Bank of the City of New York, appellant, *vs.* The American Mills Company, Albert J. Graeffe, William H. Garner, Mary J. Graeffe, & William H. Bowen. Filed July 19, 1887.

Supreme Court of the United States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Between
THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,
AND
THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. GARNER, MARY J. GRAEFFE and WILLIAM H. BOWEN.

No. 62.
October term, 1890.

BRIEF
for the appellant.

This suit is brought by The Fourth National Bank of the City of New York, a corporation created under the laws of the United States providing for national banking associations (pp. 1, 16, 25), as a creditor of the defendant The American Mills Company. The object of the suit is to reach a claim in favor of that company against the defendant Mary J. Graeffe, and compel its application upon complainant's judgments. The suit was begun upon December 3, 1881 (pp. 7, 8), and the jurisdiction of the court was, therefore, unaffected by the Act of July 12, 1882 (First N. B. vs. Morgan, 132 U. S., 141).

The defendant Mills Company, at the times involved, was a manufacturing corporation organized in the city and county of New York under the laws of the state of New York, and especially under

an act to authorize the formation of corporations for manufacturing mining, mechanical or chemical purposes, passed February 17, 1848 (pp. 43, 44). It was engaged in manufacturing woolen goods at Warwick, Rhode Island. The defendant, Albert J. Graeffe, was one of its trustees, and was its treasurer (p. 50). He was engaged in business as a dry goods commission merchant at New York (pp. 28, 34, 35, 84), and acted there as consignee of the Mills Company, receiving its goods for sale on commission and accounting at the end of each month for sales made (pp. 2, 3, 10, 11, 27, 28, 34, 35, 42, 43, 47, 48, 50, 51, 84). As the goods were sold, they were charged by the Mills Company to Graeffe (p. 84), and he, from time to time, accepted drafts drawn by the company against its consignments (pp. 54, 56, 57, 84, 86). At various times prior to February 28, 1881, the company had thus consigned to Graeffe a large amount of goods which then remained in his possession unsold (pp. 3, 11, 28, 35, 43, 82, 86, 88). At that date there were outstanding acceptances to a considerable amount drawn by the Mills Company and accepted by Graeffe (pp. 57, 60, 65).

Upon February 28, 1881, a meeting of the trustees of the Mills Company was held in Rhode Island and a resolution was passed absolutely transferring to Graeffe the goods then in his possession as above stated (pp. 3, 12, 51, 52, 81). Upon the next day, March 1, 1881, Graeffe agreed with the defendant Garner to transfer these goods to him for $45,064. . Entries of such transfer were accordingly made in Graeffe's books (pp. 4, 26, 28, 46, 81). Garner acted in the matter as agent for the defendant Mary J. Graeffe, the wife of Graeffe, and the transfer was on account of a debt alleged to be due from her husband to her (pp. 4, 14, 17, 18, 21, 48, 49, 88). No other consideration was paid (pp. 61, 82, 83). Garner took possession of the goods thus transferred, and they were sold under his direction for account of Mrs. Graeffe (pp. 4, 14, 20, 29, 30, 35, 89, 90, 93). She received therefrom the sum of $32,500 (pp. 4, 43, 94).

The complainant was at this time the holder of seven acceptances drawn by the Mills Company and accepted by Graeffe (pp. 1; 26, 27). Their aggregate amount was $20,500 (pp. 26, 27). Prior to the beginning of this suit the complainant recovered judgments thereon which were duly docketed in the Supreme Court of the State of New York, for the City and County of New York, against both Graeffe and the Mills Company (p. 27). That is the county where the Mills Company was then transacting its gerenal business and had

its principal office located, and of which it was then a resident. The defendant Graeffe also was a resident of that county (pp. 1, 2, 16, 19). Executions against both the Mills Company and Graeffe, in due form, were issued to the City and County of New York (p. 2). The executions were returned wholly unsatisfied and the judgments are wholly unpaid (pp. 2, 27). This suit was then brought to reach the proceeds of the goods in Mrs. Graeffe's hands.

The facts above stated are set forth in the bill and established by the proofs. The proofs establish, also, certain other facts which will be hereinafter set forth in connection with the points upon which they bear. The defendants had judgment of dismissal below (pp. 95, 97, 99,100), and a motion for rehearing was denied (pp. 98, 99). The complainant has brought the case here by appeal (pp. 100, 106).

Assignment of Error.

The decree was erroneous in adjudging that the bill be dismissed upon the merits, and that the defendants recover their costs of the complainant. It should have adjudged that the complainant was entitled to judgment, as prayed in the bill.

FIRST.

The suit is well brought.

The rule is established by authority that a creditor having judgment and unsatisfied execution in a state court, may resort to the national courts of the same locality for aid in reaching the debtor's equitable assets (Ogilvie vs. Knox Ins. Co., 2 Black, 539; 4 Bissell, 371; Wilkinson vs. Yale, 6 McLean, 17; Putnam vs. New Albany Co., 4 Biss., 365; Scottish Co. vs. Follansbee, 9 Biss., 482, 14 Fed. Rep., 125; Owens vs. Gotzian, 4 Dillon, 436; Gorrell vs. Dickson, 26 Fed. Rep., 454).

Instances may be found also in Shields vs. Thomas, 18 How., 253; Barber vs. Barber, 21 How., 583; Holladay Cases, 27 Fed. Rep., 830. The authorities in the courts of New York, relied upon to the contrary, rest wholly upon the ground that the statute of the state regarding creditors' bills provides that there must be

judgment and execution at law, and that this, of course, means, in the absence of more general language, judgment and execution in a court of the state (Tarbell vs. Griggs, 3 Paige, 207; Tompkins vs. Purcell, 12 Hun, 662; Davis vs. Bruns, 23 Hun, 648).

It may be observed in addition that the utter insolvency of the company was fully proved (*infra*, pp. 6, 7), and, therefore, under controlling authorities judgment and execution at law were probably unnecessary (Terry vs. Tubman, 92 U. S., 156; Case vs. Beauregard, 101 U. S., 688; Holladay Case, 27 Fed. Rep., 830, 835).

An execution creditor of a corporation, too, may maintain in the national courts a bill in his own name against any of its debtors to subject such assets to payment of his judgment (Hatch vs. Dana, 101 U. S., 205; Ogilvie vs. Knox Co., 22 How., 380), and, in accordance with the general rules regarding creditor's suits, he may file his bill in behalf of all others similarly situated or in behalf of himself alone, as he prefers (Marsh vs. Burroughs, 1 Woods, 463; Bartlett vs. Drew, 57 N. Y., 587, approved, 101 U. S., 205).

Complainant's rights in this behalf are not affected by the Code of Civil Procedure of New York. This provides that, upon the return of execution unsatisfied, a judgment creditor may maintain a suit to reach equitable assets (Sec. 1871), and regulates, in some respects, the course of the proceedings (Secs. 1872–1879). These sections do not, however, apply where the judgment debtor is a corporation created under a law of the state (Sec. 1879). In such a case the Code provides that a judgment creditor may maintain an action to procure a judgment sequestrating the property of the corporation, and providing for a distribution thereof (Sec. 1784). That is to say, the legislature has seen fit to deprive the courts of New York of the general power of all courts of equity to entertain creditors' bills to reach the equitable assets of corporations. The provision, it will be observed, is not that all the assets of corporations of the state shall be distributed equally among their creditors. And it has just been held by authority that there is no such general public policy in the state (Varnum vs. Hart, 119 N. Y., 101). The provision is merely that a corporation's intangible property must be reached through proceedings for sequestration, and not through the ordinary judgment creditor's suit.

But this cannot affect the complainant's right to relief here The rule is "that the equity jurisdiction and remedies conferred "by the constitution and statutes of the United States cannot

" be limited or restrained by state legislation, and are uniform " throughout the different states of the Union. Hence the circuit " court for any district embracing a particular state will have juris- " diction of an equity proceeding (if, according to the received prin- " ciples of equity, a case for equitable relief is stated), notwith- " standing that, by a peculiar structure of the state (statutes), such " a proceeding could not be maintained in any court of the state " (Payne vs. Hook, 7 Wall., 425). "We have repeatedly held," the court said in that case, " that the jurisdiction of the courts of the " United States over controversies between citizens of different " states cannot be impaired by the laws of the states which pre- " scribe the modes of redress in their courts, or which regulate the " distribution of their judicial powers. If legal remedies are some- " times modified to suit the changes in the laws of the states and " the practice of their courts, it is not so with equitable. The equity " jurisdiction conferred on the Federal courts is the same that the " High Court of Chancery in England possesses; is subject to " neither limitation nor restraint by state legislation, and is uni- " form throughout the different states of the Union (p. 430)." Again in Ridings vs. Johnson, 128 U. S., 217, the court said " we " have distinctly held that the equity jurisdiction and remedies " conferred by the laws of the United States upon its courts " cannot be limited or restrained by state legislation, and are uniform " throughout the different states of the Union."

The same thing is held in Suydam vs. Broadnax, 14 Peters, 67; Union Bank vs. Jolly, 18 How., 503; Hyde vs. Stone, 20 How., 175; Hess vs. Reynolds, 113 U. S., 73; Arrowsmith vs. Gleason, 129 U. S., 86, 98.

Some weight seemed to be attached below to the fact that a receiver of the Mills Company was appointed in 1883 (p. 93). But this suit was begun more than a year previously (p. 7). Its institution gave complainant a lien upon the debt of Mrs. Graeffe to the Mills Company (Freedman's Savings Company vs. Earle, 110 U. S., 710). That lien could not be impaired by the subsequent appointment of a receiver.

It is clear, therefore, that the suit is well brought.

SECOND.

The transfer of the goods from the Mills Company to Graeffe was made in contemplation of insolvency and, therefore, by express provision of statute was utterly void.

It will be shown hereafter that there was no consideration for the attempted transfer. But, in addition to that, it was made in contemplation of insolvency and, therefore, by virtue of the statute of New York (*infra*, p. 23), was *utterly void.*

The Mills Company was incorporated in April, 1880 (p. 43). Its capital stock was $150,000, of which only $53,000 to $54,000 were issued. No money whatever was put in, but the capital was paid by " turning over to it the business " of a former copartnership, composed of the persons who became trustees of the company (p. 56). The stock above stated was issued to them therefor. The defendant Graeffe held $50,000 of the stock, one John C. Schrader, his brother-in-law, held twenty odd shares, and one E. L. Graeffe, his brother, held three shares (pp. 49, 50, 83). They were the sole trustees of the company (p. 50).

Upon February 28, 1881, a meeting of the trustees was held in Rhode Island. The defendant Graeffe was present, and stated to them that there was a large amount of money due him from the company; that the account had been in that condition and unsettled for a long time; and that it seemed impossible to get down the balance of the debit. He proposed to have the goods in his possession transferred to him as owner by giving the company credit in account therefor. He offered a resolution to that effect; voted in its favor, and it was passed unanimously (pp. 51, 52, 81). This was the first time that any such arrangement had ever been made between Graeffe and the company (p. 52). Its object was to reduce the company's indebtedness to him. He insisted upon this and the company acceded (pp. 51, 53, 69, 70). The effect of the transfer was to pay his debt to the exclusion of the other creditors (p. 81).

The company was then largely indebted to other parties, and this was known to Graeffe (p. 53). Excluding the alleged indebtedness by the company to Graeffe, amounting to about $54,000, the company was then indebted for yarns, machinery, wages, etc., in the sum of $77,421.31, and was liable in addition upon drafts

drawn by it in the further sum of $90,100.40, making its total liabilities $167,521.71 (p. 93). Excluding the goods transferred upon March 1, 1881, at the price of $45,064.50, from the Mills Company to Graeffe, the company had upon that day no assets save its machinery, fixtures and supplies, amounting in value to $127,486.64 (pp. 54, 82, 93, 94). So that the effect of the transfer to Graeffe was to reduce the company's assets to an amount considerably less than its liabilities.

For a month previously, if Graeffe had not loaned to the company money or credit, it could not have paid its debts with what property it had (p. 81). Graeffe knew that the company needed money, and it was necessary for him to furnish it if the company was to continue business (p. 53). It was impossible for the company to go on unless he backed it (p. 54)—unless he furnished it with further funds. The company depended on him entirely for advances (pp. 54, 69, 80, 81, 85, 86).

Upon March 3, 1881, Graeffe made a general assignment for the benefit of his creditors (p. 43). Upon the same day a meeting of the directors of the Mills Company was held in New York, at which Graeffe was present, and a resolution was passed to the effect that the Mills Company should make a general assignment. Such an assignment was accordingly executed and filed in Rhode Island upon the next day, March 4 (pp. 44, 45, 58, 70, 71, 82).

Upon March 1 an attachment for $5,000 was levied in Rhode Island upon the personal property of the Mills Company. Further attachments were thereafter levied upon all of its personal property (pp. 58, 60). Those levied up to March 12, 1881, amounted to over $65,000. Judgments were afterwards perfected upon them, and all the personal property of the company within Rhode Island was sold in execution thereon for an amount considerably less than the judgments. The company had other liabilities in addition amounting to a large sum which are still unpaid (p. 94). During March, 1881, judgments were docketed in the city and county of New York against the Mills Company for more than $8,500. Thereafter, prior to July 1, 1881, additional judgments were so docketed amounting to more than $22,000. No part of them has been paid, and they now are wholly unsatisfied (p. 94).

It is manifest that the Mills Company was utterly insolvent. "One is solvent only in case he has property in such a situation that "all his debts can be collected out of it by legal process" (Herrick vs. Borst, 4 Hill, 650). One who is unable to meet his debts as they

mature is insolvent. (Tracy vs. Tuffly, 134 U. S., 221; Cunningham vs. Norton, 125 U. S., 90). "A corporation, like an individual, is in- "solvent when it is not able to pay its debts. Insolvency means a "general inability to answer, in the course of business, the liabilities "existing and capable of being enforced." (Brouwer vs. Harbeck, 9 N. Y., 589; Denike vs. Lime Co., 80 N. Y., 608). Insolvency of a corporation is insufficiency of the property and assets of the company to pay all its debts. (Curtis vs. Leavitt, 15 N. Y., 9, 199). It is obvious, too, that the transfer was made in contemplation of such insolvency. It was a transfer out of the ordinary course of business (*supra*, p. 7). Graeffe knew that the company must fail unless he continued to aid it (*supra*, p. 7). At the same time he was disabling himself from doing so by transferring all his property to his wife and within three days of the transfer both the company and himself failed in business. Graeffe himself has no explanation to offer.

The Revised Statutes of New York, as in force at the time when this transfer was attempted to be made, contained the following provision (1 R. S., 603; 2 R. S., Sixth Ed., 399, Sec. 4; *infra*, *p.* 23): "Whenever any incorporated company shall have refused the pay- "ment of any of its notes or other evidences of debt * * it shall "not be lawful for such company or any of its officers to assign or "transfer any of the property or choses in action of such company "to any officer or stockholder of such company, directly or indirectly, "for the payment of any debt, *and it shall not be lawful to make any "transfer or assignment in contemplation of the insolvency of such "company to any person or persons whatever; and every such transfer "and assignment to such officer, stockholder or other person or in trust "for them or their benefit, shall be utterly void.*"

The statute applies to two classes of transfers (1) when notes, etc., have remained unpaid and (2) in contemplation of insolvency. The provision regarding the second class extends to all persons whomsoever and applies to all assignments for any purpose made in contemplation of insolvency (Harris vs. Thompson, 15 Barb., 62, Cheever vs. Railway Co., 43 Superior, 488). Manufacturing corporations are, of course, within its operation (Sibell vs. Remsen, 33 N. Y., 96; Loring vs. Gutta Percha Co., 30 Barb., 644, affd., 36 Barb., 329; Kingsley vs. Bank, 31 Hun, 329). Transfers or assignments made in view or contemplation of present existing insolvency of the corporation are as much within the statute as when the insolvency is merely anticipated in the future (Robinson vs. Bank of

Attica, 21 N. Y., 406). And a transfer in contemplation of insolvency, made on account of an antecedent debt, is within the prohibition whether or not the party receiving the transfer be aware of the condition of the company (Brouwer vs. Harbeck, 9 N. Y., 589).

> "The creditor to whom the authorized payment or transfer "is made is not a purchaser; he parts with nothing, and upon "being compelled to account for whatever he may have received, "he still loses nothing which he has a right, legal or equitable, "to retain. His debt revives, and he again becomes a creditor, "and shares equally with the others in the property of the "debtor. He receives all to which he ever had a legal right; "and the equities coincide with the legal rights of the parties" Brouwer vs. Harbeck, 9 N. Y., 589. To the same effect are, Robinson vs. Bank of Attica, 21 N. Y., 406; Cheever vs. Railway Co., 43 Superior, 478.

It is a singular misapprehension of complainant's position to say that it seeks to obtain a preference by virtue of this statute (p. 98). It is not asserting any claim thereunder. It relies upon the statute merely as establishing that the transfer attempted for the purpose of defeating complainant's rights to subject the debtor's property to payment of its debts was utterly void. If it should be the fact that complainant by use of its legal remedies had secured a preference, that would be in no way inconsistent with the statute (Varnum vs. Hart, 119 N. Y., 101). Certainly Mrs. Graeffe would not be aggrieved thereby, for she was not a creditor of the Mills Company.

Of necessity, therefore, the action so taken by the Mills Company upon the eve of insolvency was ineffectual to confer upon Graeffe any right of property in the goods greater than that which he already had. It is suggested that it was merely a "foreclosure of his lien" (p. 96). But the name by which the transaction was called can make no difference. For if it attempted to increase Graeffe's rights in the goods, *quoad hoc* this was an attempted transfer or assignment, and *every* such transfer is *utterly void.*

If, then, the transfer of the goods by Graeffe to his wife can be sustained at all, it must be upon the ground that it was authorized by his rights, irrespective of this attempted action by the Mills Company. For that action was *utterly void.*

THIRD.

Graeffe had no right in the goods which he could transfer in payment of his own debt and to the exclusion of the company's debt to complainant.

When Graeffe failed, there were acceptances outstanding drawn by the Mills Company, and accepted by him to the amount of $90,-100.40 (pp. 57, 65, 73). These consisted of three classes.

(1.) The following drafts had been accepted by Graeffe, and the paper returned to the company and used by it (pp. 65, 66, 73):

No.	9,	dated	Nov.	6,	1880, for	$3,100 40
	2160,	"	"	11,	"	2,000 00
	2161,	"	"	12,	"	2,000 00
	2168,	"	Dec.	2,	"	2,500 00
	2173,	"	"	17,	"	3,000 00
	2178,	"	"	10,	"	4,000 00
	2179,	"	"	16,	"	2,000 00
	2187,	"	"	21,	"	2,500 00
	2188,	"	Jan.	30,	1881 "	3,500 00
	2191,	"	Feb.	18,	"	1,000 00
	2192,	"	"	25,	"	2,000 00
		Total				$27,600 40

(2) The following drafts had been accepted and discounted by Graeffe and the proceeds forwarded by him to the Mills Company (pp. 66, 73):

No.	7,	dated	Oct.	28,	1880	$2,500 00
"	8,	"	Nov.	1,	"	2,500 00
"	10,	"	"	4,	"	2,500 00
"	12,	"	"	8,	"	2,500 00
"	2162,	"	"	13,	"	3,000 00
"	2163,	"	"	19,	"	2,500 00
"	2164,	"	"	25,	"	2,500 00
"	2171,	"	Dec.	11,	"	2,500 00
"	2176,	"	"	27,	"	2,500 00
"	2180,	"	Jan.	4,	1881	3,000 00
"	2183,	"	"	17,	"	3,000 00
"	2185,	"	"	27,	" (on account)	1,000 00
	Total					$30,000 00

These two classes, amounting together to $57,600.40, comprised all the outstanding acceptances of which the Mills Company had had the benefit (p. 73). These acceptances were charged upon Graeffe's books to the company (pp. 58, 65).

(3) The balance of the $90,100.40 consisted of acceptances of which the Mills Company had not had the benefit. They were retained by Graeffe when received from the Mills Company, and used in his own business (pp. 65, 73, 74). These acceptances were not charged upon Graeffe's books to the company (pp. 58, 65). They were as follows (pp. 66, 67, 74):

No. 2165,	Dated Nov. 26, 1880	----------	$3,000	
" 2167,	" Dec. 1, "	----------	3,500	
" 2170,	" " 8, "	----------	3,000	
" 2172,	" " 14, "	----------	3,000	
" 2174,	" " 20, "	----------	3,000	
" 2175,	" " 23, "	----------	3,000	
" 2177,	" " 30, "	----------	3,000	
" 2181,	" Jan. 7, 1881	----------	3,000	
" 2182,	" " 12, "	----------	3,000	
" 2185,	" " 27, "	----------	2,000	balance.
" 2186,	" " 31, "	----------	3,000	
Total	----------		$32,500	

Graeffe's ledger account with the Mills Company covers the entire existence of the company, extending up to March 1, 1881 (pp. 57, 58, 64, 74). Its items are, in the aggregate, as follows (pp. 75–9):

Dr.		Cr.	
Acceptances	$77,588 76	Merchandise	$96,831 34
Merchandise	19,827 99	Bills payable	4,000 00
Cash	8,087 93	Interest	1,641 46
Commissions and cartage	7,338 17	Commission	1,446 15
Interest	1,117 48	Suspense acc't	321 49
		Cash	18 61
Total	$113,410 33	Total	$104,259 05
Total to credit	104,259 05		
Mch. 1, balance to debit	$9,151 28		

It will be noted that the total acceptances charged against the company, and of which it had had the benefit, amounted to $77,588.76. Part of these, however, had been paid (p. 67), leaving out-

standing, as already stated $57,600.40 (p. 80). None of these, it will be observed, were yet due.

The credit for merchandise includes the goods transferred to Garner upon February 28, at $45,064.30 (pp. 49, 61, 68, 79, 84, 85). The balance finally remaining due, namely, $9,151.28, and the amount at which the goods were transferred, namely $45,064.30, together manifestly constitute the balance to Graeffe's credit upon February 28, when the transfer of goods was made, namely, $54,215.58. While, then, Graeffe had charged to the Mills Company the $57,600.40 of acceptances of which it had had the benefit, according to his own showing all that was due to him was $54,215.58. The difference is, of course, explained by credits for balances in his hands arising from sales of goods. Graeffe's claim then is that the Mills Company was indebted to him for advances amounting to $54,215.58. It will be shown hereafter that he had, in fact, made no advances whatever to the company, and that the amount of the acceptances to secure the payment of which Graeffe could hold the goods was in fact very much less than the balance claimed. But in no event did the facts entitle him to transfer the goods on account of his own debt.

Even if Graeffe had in fact made advances upon the goods, that would have given him no such right. It is elementary that a factor cannot pledge or transfer his principal's goods on account of his own debt (Warner vs. Martin 11 How., U. S., 209; Allen vs. St. Louis Bank, 120 U. S., 20; Evans vs. Porter, 2 Gall., 13; Wickham vs. Morehouse, 16 Fed. Rep., 324; Commercial Bank vs. Heilbronner, 108 N. Y., 439; First National Bank vs. Boyce, 78 Ky., 42; De Bouchout vs. Goldsmid, 5 Vesey, 211 Graham vs. Dyster, 2 Starkie, 21; Queiroz vs. Trueman, 3 Barn. & C., 342). And this is the rule, even although the factor has a lien for advances upon the goods. That gives him no property right therein as against his principal.

> " A lien as has been well observed in Brace vs. Duchess of " Marlborough (2 P. Wms., 491), is neither a *jus ad rem* nor a *jus* " *in re.* The lien of a factor is the mere right of retaining the " goods of his principal until his demands in that capacity are " settled; and it gives the factor a rightful possession, which " cannot be divested without his own consent. But as against " his principal it gives him no general or special property " (per STORY, J., in Meany vs. Head, 1 Mason, 319; to similar effect is McCullough vs. Roots, 19 How., U. S., 349, 354).

These principles have recently been again laid down by the highest authority

In Allen vs. St. Louis Bank, 120 U. S., 20, one Dowell, a factor, against a consignment of cotton by his principals, endorsed their promissory note. Dowell then pledged the cotton to the Bank to secure generally advances made to him by the Bank. It was held, that his endorsement of the note gave him no interest in the cotton which he could thus transfer upon account of any debt of his own other than his liability upon the endorsement. The court said that the principal's rights were available either by independent suit or by way of defense (p. 40). To the claim that the Bank was protected by the factor's act, the court replied that even if the Bank had acquired its title in the manner contemplated by that act, still the act would probably not have been available to it because the Bank had knowledge that Dowell held the goods as a factor merely.

In Commercial National Bank vs. Heilbronner, 108 N. Y., 439, certain goods had been consigned by one Taft to a firm of Vanuxem, Wharton & Co., who sold them to the defendant Heilbronner. Under the arrangement between the consignees and the consignor the former were to make, and, in fact, had made advances and were to guarantee sales. It did not appear that Taft had been called upon to repay the advances or that there was any default upon his part. Vanuxem, Wharton & Co. assigned the claim against Heilbronner to the plaintiff bank before the term of credit had expired. The court held that this assignment was wholly without effect. It said, "as factors, "Vanuxem, Wharton & Co. had no title to the consigned goods. "The consignor, upon a consignment of goods to be sold on com- "mission, does not part with his title by the consignment, but "he continues to be the true owner of the consigned property "until sold by the consignee, and the rule is the same whether "the consignee is a *del credere* factor, or is under advances for "the principal, or is simply an agent for sale assuming no re- "sponsibility except that usually appertaining to the position of "an agent (Baker vs. N.Y. Nat. Ex. Bank, 100 N. Y., 31; *ex parte* "White, 6 L. R. Ch. App., 403). But a factor under advances "for his principal, or who guarantees the sale, has a lien on "the goods and their proceeds for his advances, and an in- "terest in the debts arising upon sales to protect his guar- "anty. He is entitled to retain possession of the goods "and their proceeds to protect his lien, and to collect and sue "the debts in his own name, rights of which the principal can- "not deprive him except by reimbursing the advances, or in case "of a *del credere* factor by relieving him from his guaranty "(Hudson vs. Granger, 5 Barn. & Ald., 27; Story on Agency, "Secs. 398, 407, 408, 424). But such factors are, nevertheless, "agents and cannot deal with the property or proceeds as their "own. They cannot pledge the goods for their own debt "(Buckley vs. Packard, 20 Johns., 421), and an unauthorized "pledge by a factor did not, at common law, transfer any right

"as against the principal, even to the extent of his lien (Mc-
"Combie vs. Davies, 7 East., 5; Graham vs. Dyster, 6 M. & S.,
"1; Leake on Contracts, 515). * * The precise question
"in the present case is whether a factor, having advanced gen-
"erally on the goods in his hands, can, in the absence of special
"authority, sell, out and out, a debt existing in open account
"arising on a sale of a portion of the consigned goods so as to
"transfer a good title to the claim, and this, too, before the
"maturity of the debt, and when the principal is not in default
"and has not been called upon to repay the advances and
"there are no special circumstances. * * The transac-
"tion between Vanuxem, Wharton & Co. and the bank was
"not a sale of goods or a collection of a debt. By the
"general rule a factor cannot bind the principal by a dispo-
"sition of his property out of the ordinary course of business
"(Easton vs. Clark, 35 N. Y., 225). We have been referred to no
"authority holding that a factor possesses the authority exer-
"cised by Vanuxem, Wharton & Co. in this case. Such a con-
"struction of his power would be inconvenient and might lead to
"great abuses. It would enable the factor to put his princi-
"pal's property out of his hands before any default on the part
"of the principal, thereby depriving the latter of the right to
"the possession of his property on discharging the factor's
"claims. Assuming that the transferee would himself be held
"to account, it subjects the principal to the embarrassment of
"calling third parties into the settlement of his transactions
"with his agent. The transaction in this case was out of the
"ordinary course of business, and has all the earmarks of an
"irregular proceeding. It was not an assignment to the bank of
"the factor's lien, accompanied with a delivery of the property
"of the principal to keep possession for the factor in order to
"preserve the lien (Urquhart vs. McIver, 4 Johns., 103). We
"think a factor's authority does not justify a transaction of this
"character, and that the bank acquired no title to the claim."

In Holly vs. Huggeford, 8 Pick., 76, the court said, "the
"lien of a factor does not dispossess the owner until the
"right is exerted by the factor. It is a privilege which he
"may avail himself of or not, as he pleases. It continues only
"while the factor himself has the possession, and, therefore, if
"he pledges the goods for his own debt, or suffers them to be
"attached, or otherwise parts with them voluntarily, the lien
"is lost, and the owner may trace and recover them, or he may
"sue in trespass if they are forcibly taken, for his constructive
"possession continues notwithstanding the lien. None but the
"factor himself can set up this privilege against the owner.
"It is a personal privilege of the factor and cannot be trans-
"ferred. Nor can the question upon it arise between any but
"the principal and factor." This case is approved in McCul-
lough vs. Roots, 19 How. U. S., 349, 354.

To the same effect are Jarvis vs. Rogers, 15 Mass., 389; Jones vs. Sinclair, 2 N. H., 321; Smith vs. Smith, 9 Abb. Pr. N. S., 420; Lehigh Co. vs. Railroad Co., 29 N. J. Eq., 252; Cairo Co. vs. Fackney, 78 Ill., 116; Moshier vs. Meek, 80 Ill., 79; Daubigny vs. Duval, 5 T. R., 606; Legg vs. Evans, 6 M. & W., 42; Donald vs. Suckling, L. R., 1 Q. B., 595, 605; Story on Agency, Sec. 372.

These authorities precisely cover the state of facts claimed by Graeffe. Even had there been the advances which he claims, still as they were not overdue, and as no such arrangement was authorized by the company prior to its insolvency, Graeffe had no power to apply the goods upon account of his own debt.

But, in point of fact, Graeffe had not even made advances to the company. He had accepted its drafts against the goods in his possession to the net amount, as he claims, of $54,215.58 (*supra*, p. 12). None of these acceptances had matured, and Graeffe had paid out nothing upon account of them. He had advanced no money upon the goods. Until he did so there could be no debt from the company to him. This is manifest from the results of the course pursued. Graeffe accepted drafts against the goods; then, by charging the acceptances to the company, he produced a debit from the company to himself; then, without paying the acceptances, he had the goods transferred by the company to himself on account of this debit; then he disposed of the goods in payment of his own debt. So that the company lost its property and received nothing therefor, but, on the contrary, remained liable upon the acceptances. Clearly no such result could be supported by the mere acceptance of the drafts by Graeffe. The company still owned the goods (United States vs. Villalonga, 23 Wall., 35, 42; Baker vs. National Bank, 100 N. Y., 31). Its only obligation was to indemnify Graeffe for any sums which he might pay upon the acceptances.

This exact point was ruled in Hidden v. Waldo, 55 N. Y., 294. The claim was asserted there, as here, that when factors accepted drafts against consignments, the consignor became indebted to the factors for the drafts. But the court held otherwise. It said, "if the factors had paid the acceptances from "their own funds, their action against the drawers would "not have been upon the bills. No action would lie at their "suit against the drawers as such, but the action would be upon "the implied promise to indemnify and for money paid to and "for their use, and the recovery would necessarily be limited to "the amount actually paid. A surety can only claim of his

"principal indemnity, and the sum actually paid for the lat-
"ter."

Graeffe was, of course, entitled to hold the goods until these obligations matured and then to apply their proceeds to payment of the acceptances rather than to pay them over directly to the company (Nagle vs. McFeeters, 97 N. Y., 196). But any other disposition of the goods was not only unauthorized but a breach of trust (Baker vs. Bank, 100 N. Y., 31). Graeffe then did not have even the position of having advanced upon the goods. He had merely a right to apply their proceeds to payment of certain obligations of the company. Upon reason and, as has been seen (*supra, pp.* 11–14), upon authority still less did this give him any right to apply them to payment of his own debts.

The extent of even this right to control the application of the proceeds of the goods was but $21,715.58. If the company had owed Graeffe money, and Graeffe had owed the company money, his claim would of course have been merely for the difference. And so, as the company was bound to indemnify Graeffe against certain paper used for its accommodation, and Graeffe was bound to indemnify the company against certain other paper used for his accommodation, the obligation of the company was merely for the difference. Or to put it somewhat differently, as the company was primarily liable upon some of the paper, and Graeffe upon some of it, the difference measured the extent of the company's obligation as between themselves. It is, therefore, wholly immaterial for what amount the company saw fit "to recognize Graeffe's claim" (p. 97).

Careful examination of the record, indeed, fails to disclose any recognition of the amount of the claim by the company. Graeffe's statement when the transfer was made was merely that the company owed him "a large amount" (pp. 52, 81), and there is nothing else save testimony as to how he made the entries in his own books. That, of course, proves nothing against the company.

The question is what was its lawful amount. Any recognition of it at a greater sum was fraudulent. Moreover it was *utterly void* as part of the transfer attempted in contemplation of insolvency.

As has just been said, obviously the amount for which Graeffe could claim to control the goods must be the difference between the company's obligations to indemnify him against outstanding acceptances and his obligations to the company of precisely the same character. It will be remembered that

the total amount of the acceptances outstanding, of which the Mills Company had had the benefit, was $54,215.58 (*supra*, p. 11), while there were other acceptances outstanding which had been used by Graeffe himself, amounting to $32,500 (*supra*, p. 10). The difference was $21,715.48. That was the utmost extent of any right of Graeffe in the premises. Indeed, so far as there is any question regarding this, it arises wholly from Graeffe's disregard, in making entries in his own books, of the rights of his *cestui que trust*. When he accepted a draft and the company had the proceeds, he charged it to the company at once. When, then, the company drew a draft and Graeffe had the proceeds, the company should equally have been credited. If this obviously proper course had been followed, Graeffe's books would show a balance against the company of only $21,715.48. But, instead of this he simply omitted to give the company any credit for its paper which he used, and now relies upon this omission upon his own books as showing that the company should have no credit therefor. But the omission of entries in Graeffe's books cannot prejudice the company. The law makes the offsets.

The learned court below referred to the lack of explanation in the record of this use by Graeffe of the company's paper (p. 97). The burden to explain was upon Graeffe. Moreover, the thing speaks for itself. Graeffe's control of the corporation was absolute. He held almost the entire capital. Its sole trustees, beside himself, were his brother and brother-in-law (pp. 50, 83). Accordingly he used it as he saw fit. When he accepted a draft and the company had the proceeds, as already said, it was charged up at once. When he used for his own benefit a draft made by the company he did not enter it upon his books at all. That is all there was of it. It could not be further explained. When he was short of money he simply took the company's paper and used it without crediting it. And this fraudulent conduct toward his *cestui que trust* is the only thing showing that this use of its paper "was regarded as a separate transaction" (p. 97).

The court seemed to attach some importance to Graeffe's statement that the acceptances used by him were used to take up maturing acceptances of the company (p. 97). This, if true, is wholly immaterial, for, as the acceptances were already charged to the company, the money used to take them up could not be made the subject of a further charge against it.

Graeffe's right to apply the proceeds of the goods in payment of the acceptances, therefore, existed only to the extent of $21,715.48 of such proceeds. But the goods were worth $45,064.30 (pp. 4, 26, 28, 46, 81). That is to say, their value exceeded Graeffe's interest

in them of any character whatsoever by an amount larger than complainant's debt (pp. 26, 27). As to that excess Graeffe had no shadow of interest in the goods of any sort.

It is, therefore, manifest that Graeffe had no rights in the goods warranting their appropriation to payment of his own debt to the exclusion of the debt of the company to the complainant.

FOURTH.

Mrs. Graeffe acquired no rights in the goods by virtue of the attempted transfer, and is liable for their value.

It is, of course, elementary that the transfer to Mrs. Graeffe on account of the antecedent debt due from Graeffe to her did not constitute her a purchaser for value. (Barnard vs. Campbell, 58 N. Y., 73; Robinson vs. Bank of Attica, 21 N. Y., 406; Brouwer vs. Harbeck, 9 N. Y., 593; Erie Co. vs. Vanderbilt, 5 Hun, 123, 133; Re Antisdel, 18 Bankr. Reg., 289; Moyer vs. Adams, 2 Fed. Rep., 182; Knowlton vs. Mish, 17 Fed. Rep., 198; Platt vs. Schreyer, 25 Fed. Rep. 83). And she is, therefore, accountable for the goods and their proceeds.

In Warner vs. Martin, 11 How., 209, a factor delivered to a creditor of his own, in payment of his debt, merchandise belonging to the consignor. The court held that a factor or agent who has power to sell the goods of his principal, has no power to affect the property by tortiously pledging it as a security or satisfaction for a debt of his own, and it is of no consequence that the pledgee is ignorant of the factor's not being the owner. Under any of these irregular transfers a court of equity will compel the holder to give an account of the property which he holds.

In Allen vs. St. Louis Bank, 120 U. S., 20, a factor had pledged the goods of his principal to secure advances made to him on the faith of the pledge. It was held that the goods in the hands of the pledgee remained subject to the principal's rights, and that the same could be enforced against the pledgee either defensively or by independent suit (p. 40).

In Long vs. Bussell, 45 N. Y. Superior, 434, affirmed, 83 N. Y., 606, a factor sold the goods of his principal upon credit. He then assigned the indebtedness therefor to a creditor of his own on account. The creditor collected the money. It was held that he was liable therefor to the consignor.

To the same effect are Baker vs. National Bank, 100 N. Y., 31; Commercial Bank vs. Heilbronner, 108 N. Y., 439.

But the claim is made that Mrs. Graeffe acquired Graeffe's rights regarding the goods, and is, therefore, entitled to hold their proceeds. This is really an afterthought, for the reliance of the parties at the time was wholly upon the transfer from the Mills Company to Graeffe and the subsequent bill of sale from him to his wife. And the claim is without merit.

It has been already shown (*supra*, pp. 15, 16), that there was no debt due from the company to Graeffe which he could assign to Mrs. Graeffe and he made no attempt to make any such assignment. His only right in the premises was to control to some extent the application of the proceeds of the goods, and that right, as has been seen, was incapable of assignment. So that nothing passed to Mrs. Graeffe by Graeffe's bill of sale of the goods.

But even if Graeffe's right to apply the proceeds of the goods in payment of the acceptances had passed to Mrs. Graeffe, that would not affect the result. Her rights in the proceeds would be no greater than his were. The receipt of those proceeds by Mrs. Graeffe is admitted (p. 94). There is no suggestion that they have been paid out in the only way in which there was authority to expend them. On the contrary the acceptances have been allowed to go to judgment and remain wholly unpaid. There is in Mrs. Graeffe's answer (pp. 19-21) no offer, no suggestion of willingness to make the proper application of the money. The claim is that Mrs. Graeffe is entitled to retain it as her own (p. 21). Even if she had acquired all of Graeffe's rights in the premises, manifestly she would have had no such right. The fact that this money was placed in their hands for a certain specific and definite purpose would give them no right to apply it to a totally different purpose. And their duty to so apply it could not shield them from responsibility by reason of failure to perform that duty. On the contrary, as they have failed and now refuse to make the only application of the money which they were authorized to make, the money is recoverable by the company. For it is well settled that when money is received for a designated purpose which fails, the owner of the money may sue to recover it (Nash vs. Towne, 5 Wall., 689; Farrand vs. Hurlbut, 7 Minn., 477; Buchanan vs. Findlay, 9 B. & C., 738; Fletcher vs. Marshall, 15 M. & W., 763; Wilson vs. Church, 13 Ch. D., 1, affd., 5 App. Cas., 176; Leake on Contracts, 113). Even, therefore, if Graeffe's rights in the premises had passed to Mrs. Graeffe, they would constitute no defense.

Still further and in any event, the balance for which the Mills Company was liable as between itself and Graeffe, as has just been

seen (*supra*, pp. 16, 17), was only $21,715.58. But on account thereof goods were transferred to Graeffe and by him to Mrs. Graeffe which were worth $45,064.30. Clearly, in any possible aspect of the case, Mrs. Graeffe would be liable for the value of the goods over and above $21,715.58, the extreme limit of Graeffe's interest in the premises. And judgment would necessarily go against her to that extent. That would be more than complainant's judgments at law.

It is manifest, therefore, that Mrs. Graeffe acquired no rights in the goods by virtue of the attempted transfer, and is liable for their value.

CONCLUSION.

The decree should be reversed and judgment ordered in complainant's favor.

The character of the scheme is illustrated by various aspects of its results.

Among the acceptances which complainant holds are the following (p. 26):

No. 7	$2,500
No. 2163	2,500
No. 2180	3,000

These were a part of the $57,600.40 in acceptances of which the Mills Company had the benefit (pp. 66, 73). They are, therefore, a part of the advance of credit for which Graeffe held the goods in question. As has been seen his sole right in the goods was to apply their proceeds to the payment of these acceptances among others. But he seizes the proceeds and appropriates them to his own use. Judgment upon these acceptances is now sought to be collected from the very goods which were in his hands for their payment and for that alone. He resists upon the ground that he had the right to appropriate the proceeds to the payment of these very acceptances. But he makes no offer to pay them. Surely complainant cannot thus be defrauded out of payment of its debt.

Whether or not Mrs. Graeffe's alleged claim against her husband was valid, it was equally fraudulent to appropriate to the payment thereof property of the Mills Company. And that was the purpose and result of all that was done. Mrs. Graeffe, at the most, was only a creditor of

Graeffe. The Mills Company owed her nothing (p. 83). Finding himself upon the eve of failure, Graeffe transferred to her all his own available property (pp. 3, 11, 45, 63), including the very premises upon which the manufactory was situated (pp. 45, 46). At the same time he conceived the scheme of transferring to her the property of the Mills Company as well. The company owed him nothing. He had merely accepted paper for it, and the company had deposited with him goods to ensure payment of this paper at maturity. These goods he held in trust to be applied to such payment (Baker vs. Bank, 100 N. Y., 31). Until they were exhausted therein he had no claim against the Mills Company (Hidden vs. Waldo, 55 N. Y., 294). But Graeffe called together his servile board of directors; untruthfully told them that the company was largely indebted to him; offered a resolution in favor of the absolute transfer to him of this property on account of a debt which had no existence, and voted for the resolution himself (pp. 3, 12, 57, 81). Then, in utter disregard of the obligations against which alone the goods had been placed in his hands, he transferred them to his wife. She has sold them and put the money in her pocket. Thus property of the company pledged for the payment of certain of its debts has been diverted wholly from its creditors to the payment of a debt of Graeffe. This has been without Graeffe ever having paid a dollar upon the acceptances or to the company for the property. And the legitimate creditors of the company, including those for the payment of whose debts alone was Graeffe entitled to hold the goods, are paid nothing.

The extent of this fraud is shown by the statement hereto attached (*infra*, p. 22) of all the acceptances ever drawn. Their total amount was $107,088.76. Of this there had been paid or taken up only $16,988.36. At the time of the failure there were acceptances outstanding to the amount of $90,100.40, of which Graeffe had personally used $32,500. As has been said, the goods placed by the company in his hands to be applied in payment of the drafts which had been used by the company were seized by Graeffe and applied upon his individual debt, and the $90,100.40 of acceptances remain wholly unpaid.

Surely such a scheme cannot prevail in a court of equity, and the complainant should have judgment.

WM. S. OPDYKE,
DAVID WILLCOX,
Of Counsel for Appellant.

STATEMENT

OF ALL DRAFTS OF THE AMERICAN MILLS COMPANY ACCEPTED BY GRAEFFE DURING THE ENTIRE PERIOD OF THEIR CONNECTION WITH EACH OTHER AND OF THE USE MADE THEREOF.

Acceptances.												Drafts of the Mills Co. on Graeffe which were paid or taken up by Graeffe.	Drafts of the Am. Mills Co. discounted through Graeffe for use of the company which he has never paid.	Other drafts of the Mills Co. charged by Graeffe to the ⅓ of the company which he has never paid.	Drafts of the Mills Co. used by Graeffe himself which he has never paid.
No.	1	Dated	Augt.	30,	1880,	4	mos.,	due	Jan.	3,	1881	$3,500	$3,500			
"	2	"	Oct.	2,	"	4	"	"	Feby.	5,	1881	2,500	2,500			
"	4	"	"	11,	"	4	"	"	"	14,	"	4,000	4,000			
"	5	"	"	12,	"	4	"	"	"	15,	"	2,000	2,000			
"	6	"	"	25,	"	4	"	"	"	28,	"	2,000	2,000			
"	7	"	"	28,	"	4	"	"	March	3,	"	2,500	.....	$2,500		
"	8	"	Nov.	1,	"	4	"	"	"	4,	"	2,500	.....	2,500		
"	9	"	"	8,	"	4	"	"	"	11,	"	3,100 40	.....	.....	$3,100 40	
"	10	"	"	8,	"	4	"	"	"	11,	"	3,500	.....	2,500		
"	12	"	"	4,	"	4	"	"	"	7,	"	2,500	.....	2,500		
"	2160	"	"	11,	"	4	"	"	"	14,	"	2,000	.....	.....	2,000	
"	2161	"	"	12,	"	4	"	"	"	15,	"	2,000	.....	.....	2,000	
"	2162	"	"	13,	"	4	"	"	"	16,	"	3,000	.....	3,000		
"	2163	"	"	19,	"	4	"	"	"	22,	"	2,500	.....	2,500		
"	2164	"	"	23,	"	4	"	"	"	26,	"	2,500	.....	2,500		
"	2165	"	"	26,	"	4	"	"	"	29,	"	3,500	.....	.....	.....	$3,500
"	2167	"	Dec.	1,	"	4	"	"	April	4,	"	3,000	.....	.....	.....	3,000
"	2168	"	"	2,	"	4	"	"	"	15,	"	2,500	.....	.....	2,500	
"	2170	"	"	8,	"	4	"	"	"	11,	"	3,000	.....	.....	.....	3,000
"	2171	"	"	11,	"	4	"	"	"	14,	"	2,500	.....	2,500		
"	2172	"	"	14,	"	4	"	"	"	17,	"	3,000	.....	.....	.....	3,000
"	2173	"	"	17,	"	4	"	"	"	20,	"	3,000	.....	.....	3,000	
"	2174	"	"	22,	"	4	"	"	"	25,	"	3,000	.....	.....	.....	3,000
"	2175	"	"	23,	"	4	"	"	"	26,	"	3,000	.....	.....	.....	3,000
"	2176	"	"	27,	"	4	"	"	"	30,	"	2,500	.....	2,500		
"	2177	"	"	30,	"	4	"	"	May	3,	"	3,000	.....	.....	.....	3,000
"	2178	"	"	10,	"	4	"	"	April	13,	"	4,000	.....	.....	4,000	
"	2179	"	"	16,	"	4	"	"	"	19,	"	2,000	.....	.....	2,000	
"	2180	"	Jany.	11,	1881,	4	"	"	May	14,	"	3,000	.....	3,000		
"	2181	"	"	7,	"	4	"	"	"	10,	"	3,000	.....	.....	.....	3,000
"	2182	"	"	12,	"	4	"	"	"	15,	"	3,000	.....	.....	.....	3,000
"	2183	"	"	17,	"	4	"	"	"	20,	"	3,000	.....	3,000		
"	2185	"	"	27,	"	4	"	"	"	30,	"	3,000	.....	1,000	.....	2,000
"	2186	"	"	31,	"	4	"	"	June	3,	"	3,000	.....	.....	.....	3,000
"	2187	"	Dec.	21,	1880,	4	"	"	April	24,	"	2,500	.....	.....	2,500	
"	2188	"	Jany.	20,	1881,	4	"	"	May	25,	"	3,500	.....	.....	3,500	
"	2190	"	Dec.	14,	1880,	4	"	"	April	17,	"	2,988 36	2,988 36	.....	.....	
"	2191	"	Feby.	18,	1881,	4	"	"	June	21,	"	1,000	.....	.....	1,000	
"	2192	"	"	25,	"	4	"	"	"	28,	"	2,000	.....	.....	2,000	
												$16,988 36	$30,000	$27,600 40		$32,500

RECAPITULATION.

Acceptances paid			$16,988 36
"	discounted for the company	$30,000	
"	used by the company direct	27,600 40	
		$57,600 40	
"	used by Graeffe	32,500	
"	remaining unpaid		90,100 40
Total acceptances of every character			$107,088 76

Statute of New York.

REVISED STATUTES, PART I, CHAPTER XVIII, TITLE 4, SECTION 4, (1 R. S., § 603; 3 R. S., 8th Edition, 1729).

Whenever any incorporated company shall have refused the payment of any of its notes, or other evidences of debt, in specie or lawful money of the United States, it shall not be lawful for such company, or any of its officers, to assign or transfer any of the property or choses in action of such company to any officer or stockholder of such company, directly or indirectly, for the payment of any debt; and it shall not be lawful to make any transfer or assignment in contemplation of the insolvency of any such company to any person or persons whatever; and every such transfer and assignment to such officer, stockholder or other person, or in trust for them or their benefit, shall be utterly void.

[redacted]

Appeal from [redacted]

[redacted]

Between

THE FOURTH NATIONAL BANK [redacted]
OF NEW YORK,

[redacted]

and

THE AMERICAN MILLS COMPANY, [redacted]
WILLIAM H. GARNER, [redacted]
and WILLIAM H. [redacted]

[redacted]

BRIEF

FOR THE APPELLEES MARY L. GARNER [redacted]

ALEX. THAIN,
[redacted]

Supreme Court of the United States,

ON APPEAL FROM

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK,
Appellant,

AGAINST

MARY J. GRAEFFE and WILLIAM H. GARNER, impleaded with the AMERICAN MILLS COMPANY and Others,
Appellees.

No. 62.
October Term, 1890.

Brief for Mary J. Graeffe and William H. Garner, Appellees.

In addition to the statement of facts set forth in the brief for the appellant, the following should be noted:

By their answers (pp. 9 to 21) the defendants deny that the transfers were for the purpose of placing the goods beyond the reach of the creditors of either the defendant company or the defendant Albert J. Graeffe,

or that the transfers of furniture and real estate made prior to that time were without consideration, or in fraud of the creditors of either the defendant company or the defendant Albert J. Graeffe.

On the contrary, they allege that the goods were transferred by the defendant company to the defendant Albert J. Graeffe, to pay for advances made by him to and on behalf of the defendant company, and to pay and secure him for his liability on his acceptances for the defendant company, issued by him on the credit of said goods, which exceeded in amount the value of the goods transferred by the defendant company to him.

That he held the goods for advances which he had made thereon, and had authority to sell the same to pay the indebtedness of the defendant company to him and for his advances on said goods.

The defendants Garner and Mary J. Graeffe had no knowledge as to the manner in which the goods came into the hands of the defendant Albert J. Graeffe, and the defendant Garner received them in good faith as trustee for his sister, the defendant Mary J. Graeffe.

The defendant William H. Garner transferred the goods in good faith to the defendant Mary J. Graeffe, and they were applied in part payment of an indebtedness of the defendant Albert J. Graeffe, to her, amounting, at that time, to upwards of $100,000.

Proofs.

The undisputed facts are that the practice has been for the defendant company to ship its manufactures from Rhode Island to the defendant Albert J. Graeffe, in the City of New York, *and draw upon him for their value by sight or time bills of exchange, he paying or accepting the same, as the case might be* (pp. 54, 56, 57, 84, 86).

When sales were made on credit, the defendant company was immediately credited, and the defendant Albert J. Graeffe, debited with their value (p. 84).

At the time of the transfer to him of the goods in question, the defendant company was indebted to him for cash advances and for his outstanding acceptances made on the credit of the goods on hand, to the amount of $60,000 and upwards (pp. 57, 60, 65).

On the twenty-eighth day of February, 1881, the attention of the directors of the defendant company was called to this condition of things and a request made, that, beside the lien which the defendant Albert J. Graeffe had upon the goods on hand, for his cash advances and acceptances, a more formal transfer of the title of the property should be made to him; thereupon, by resolution of the directors of the defendant company, and bill of sale, the transaction was completed.

Long prior to this time, the defendant Mary J. Graeffe, had acquired from her uncle's estate, and from her father's estate, the sum of about $120,000, which she had loaned from time to time to the defendant Albert J. Graeffe; and for which sum he was indebted to her at the time of the transfer by him of the property in question, through the defendant William H. Garner, less, however, the sum of about $60,000 which had been repaid to her by him in the previous transfer of other property, leaving then [after the transfer of the goods at full value] and still, the balance unpaid from him to her of $17,000 and upwards (pp. 4, 14, 17, 18, 21, 48, 49, 88).

The moneys advanced to the defendant corporation were really hers (pp. 72, 86, 87, 91).

The property previously transferred had been bought with her money (p. 71).

POINTS.

FIRST.

The action is not well brought.

I. It will be conceded that the position taken by the complainant that the courts of equity of the United States are not limited in the exercise of their equitable powers by State statutes.

Defendants will go further and agree that the provisions of law, permitting certain actions to be brought in or removed into the United States Courts, were intended to relieve the parties entitled to invoke such jurisdiction from the restrictions which might be imposed upon them by the limitations of said statutes and the prejudices of local and State tribunals.

But the position taken by the complainant is not that the transfers of which it complains were in disregard of universal principles of equity, but only that they were in violation of a statute of the State of New York (see Appellant's Brief, pp. 6 to 9, 23), which is to the effect that a transfer of property by a corporation in contemplation of insolvency is void.

Complainant, then, is before this Court seeking to establish rights under this statute, when at the same time it proposes to ignore another provision of the general Code of Laws of the State of New York applicable to corporations, which provides in substance and has been construed by the Courts in that State to mean that after a creditor of a corporation shall have exhausted his legal remedies against it, he must, for equitable relief, apply for the sequestration of its property and for distribution through a receiver as follows:

Sections 1871 to 1878 of the Code of Civil Procedure of the State of New York contain the statute

law of that State in respect to procedure by way of creditors' bill.

Section 1879 however, provides as follows: "This article does not apply to a case where a judgment debtor is a corporation created by or under the laws of the State."

* * * * * *

In respect to a corporation created under the Laws of the State of New York, the following prevails (Sec. 1784, Code of Civil Procedure): "Where final judgment for a sum of money has been rendered against a corporation created by or under the laws of the State, and an execution, issued thereon to the Sheriff of the county where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment, sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in Section 1704 of this act."

Section 1793, referred to, is as follows: "A final judgment in an action, brought against a corporation, as prescribed in this article, either separately or in conjunction with its stockholders, directors, trustees or other officers, must provide for a just and fair distribution of the property of the corporation and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation."

Varnum vs. Hart, 119 N. Y., 101, is in no way at variance with the view of the statute for which we contend. In that case a defendant corporation had been sued at law and allowed judgments to be entered against it, under which some of its property was sold, thereby giving the judgment creditors a preference over other creditors of the corporation. The Court of Appeals held that suffering such judgment to be entered and suffering such seizure of property was not a violation

of the statute; and that in law, creditors could have a right to pursue their remedies to the utmost. It was not before the Court and it did not decide that when an attempt made to enforce the judgment in equity, the judgment creditors had any other remedy than that given it by sequestration under the statute.

Complainant then is before this Court in this position: A national banking corporation, and having a right to go into the United States Courts in the first instance for the enforcement of its debt at law, and afterwards to invoke the equitable powers of the national courts, in the event of its remedy at law failing; it went voluntarily into the State Courts, procured its judgments, and with these it came before the national courts of equity, and asked that they be enforced in equity, because, as it charges, the defendant corporation violated another statute law of the same State, making transfers of property under certain circumstances void, and then refuses to be bound by another statute of the same State, which virtually says that any person seeking the advantage of the first shall be subject to the disadvantages, if any, put upon it by the second statute.

But the letter and spirit of the State statute, requiring that a creditor proceeding in equity against a corporation shall do so by sequestration, is not in violation of any recognized principle of equity, but rather in furtherance of it. When an individual dies, it is a recognized principle of equity that no preference can be gained by one creditor over another; all are to be treated alike in the distribution of the assets of the deceased, and for the reason that there can be no hope of future payment. Should a person fail, however, in business, payment is made among creditors according as they are diligent in enforcing their remedies—the law rewarding the diligent, and because the debtor being then alive may yet acquire property wherewith to discharge the remaining obligations.

An insolvent corporation is precisely in the same position as a person deceased. Its powers ceased when, from lack of money to pay its obligations as they became due, its life-blood ceases. For that reason such statutes as the complainant here seeks to invoke are enacted; namely, that where a corporation practically dies by failing to pay its debts, no preference shall be given by any act of it or of its officers to one creditor over another. And when so dead, another enactment provides that the funds and property of the defunct corporation, which is all the creditors can hope to get, shall be taken in charge by some indifferent custodian, to be appointed by the Court, and equally distributed among the creditors, without preference.

To allow the complainant to succeed in this action, and to take the goods which were transferred by the defendant corporation, would have been a direct violation of the letter and the spirit of the statute, a part of which complainant seeks to evoke, and to ignore the part not deemed to its advantage.

II. The transfer by the defendant company to the defendant Albert J. Graeffe upon a claim made by him and conceded by the defendant company that his lien on the goods was for an amount greater than their value, was not an injustice to any one. It was not inequitable. It violated no principal of common law. It was not *malum per se*; at most it was *malum prohibitum*.

The complainant is, therefore, not before the Court charging the defendants with an act which was in itself inequitable, but they are here seeking the jurisdiction of this Court, by means of a bill in equity to establish a statutory liability created under the Laws of the State of New York.

Equity has been well defined as a judicial principle which makes good the deficiencies in the law; that where the law would work an injustice to enforce it, or

where the law fails to do justice between litigants, equity comes to its relief.

The complainant, then, is in the position of asserting that in the technical violation of a statute of the State of New York, one creditor of the defendant company has obtained a preference over other creditors. The statute, it says, declares such preference to be void; therefore, this court of equity is asked to intervene; to take the property from one creditor who has been preferred, in violation of the statute, and give it to another creditor who must necessarily take it in violation of the spirit, if not the letter, of the same statute law.

By its bill is asserted that these goods and the proceeds are still, by reason of the violation of the statute, the property of the defendant company; and, without offering to make good the lien of the defendant Albert J. Graeffe thereon, which, if the technical transfer to him was *malum prohibitum*, still left him the right to transfer that lien to a *bona fide* creditor of his own, it asks that the goods or the proceeds be transferred to the complainant free and discharged of all liens thereon. It is not understood by the defendants under what principle of equity such relief can be obtained, either in the State or in the National Courts.

Loring vs. Gutta Percha Co., 36 Barb., 329.

Complainant's right coming to it under the Statute of the State, no greater relief will be given in this Court than could have been obtained in the State Courts.

McElmoyle vs. Cohen, 13 Peters, 312.

III. The statute which the complainant seeks to enforce under a pretended claim for equitable relief was made part of the original law in respect to corporations upon the revision of the Statutes in the State of New York. By that it was intended that no preference should be had by one creditor

over another; and the same Revised Statutes which afford the sole foundation for any relief to the complainant also at the same time made provision for the taking of the property of an insolvent domestic corporation by sequestration, for the collection of all legal and equitable assets, and for an equal and equitable distribution of the proceeds among all creditors, full notice being required to be given to all such to come in and prove their claims.

It would be quite inequitable, and contrary to the quotation given by counsel in respect to the equitable powers of this Court, to allow the complainant to come into this Court and enforce one part of the statute law of the State of New York without taking with it the burden imposed with such right by another portion of the same statutes. It takes the benefit of the statute, *cum onere*.

By Section 5128 of the U. S. Revised Statutes, entitled Bankruptcy, any transfer of property in contemplation of insolvency, within four months before the filing of a petition in bankruptcy, is void. Then follows the remainder of the sentence, giving the assignee authority to recover the property or the value of it from the persons receiving it. In the Bankruptcy Act, the law declaring the transfer void and the authority to the assignee to recover it back are in the same section; while, in the State statutes, the section declaring preferences void is in one place, while in another, and under the general head of statutes relating to corporations, a remedy is given by means of sequestration and division without preferences.

To allow the complainant to come into this Court and seek to enforce one part of the statute and neglect another part of the same general plan or scheme, would justify a creditor of a bankrupt going into a State Court and attempting to appropriate the property or proceeds of a transfer made within four months of bankruptcy;

by ignoring the last clause of the section, which confers the right to recover it back upon the assignee only.

The construction which the Courts of the State of New York have put upon this provision of its Statute Law, is as follows:

"The injury sustained by a corporation by reason of "the unlawful acts and frauds of its officers, should be "prosecuted in the name of the corporation, and the "redress given is for the benefit of all the stockholders "and members of the corporation; but if the corpora- "tion neglects and refuses to prosecute the action on "the proper application of the members or stockhold- "ers, then they may maintain an action in equity in "their own names against the defaulting officers or "agents, and recover a sum equal to the damages "which they have individually sustained."

"As the corporation has been dissolved and a "Receiver appointed, it was not necessary for the "plaintiff to allege that she had requested the officers "of the corporation to prosecute the defendants and "that they had refused. The Receiver was properly "made a party defendant, and thus brought before the "Court to protect the interests of the corporation and "the members of that body."

"The defendants insist that as the complaint did "not allege that the Receiver had been requested to "bring the action and had refused to do so, and that "she did not offer to prove that in the opening of her "case, therefore that no cause of action was stated "against them in the complaint or offered to be proved "on the trial."

"This position we regard as well taken. The Re- "ceiver represents a corporation, and also the creditors "and the funds and causes of action which became "vested in him on his appointment are *custodia legis*, "and should not be diverted and taken from his hands, "or placed beyond the control of the Court, whose duty "it is to see that all the funds of the corporation are

" justly and equitably distributed among its creditors " and members. If the plaintiffs are allowed to recover " in this action, the sum so recovered would necessarily " be placed beyond the control and order of the Court. " We think that the complaint should have alleged that " the plaintiff requested the Receiver to prosecute the " defendants or that she had applied to the Court for " leave to sue the defendants and that the same had " been granted or refused."

Fisher vs. Andrews, 37 Hun, 176–179.
Attorney-General vs. Guard. M. L. Ins. Co., 77 N. Y., 272, 275.
Greaves vs. Gouge, 69 N. Y., 154.

If any cause of action has accrued by reason of this alleged violation of the statute, it accrued to the defendant corporation, and not to a creditor of it; and upon the dissolution of the corporation and the sequestration of its property under Section 1784 of the Code of Civil Procedure, the title to this alleged claim passed to and vested in the Receiver then appointed.

There is no allegation in the bill that the defendant corporation or its Board of Directors were applied to to bring an action to recover the goods during the existence of the defendant corporation, and no proof that such application has been made to the Receiver; nor is any excuse offered why such application was not made.

It cannot be that the same cause of action existed in favor of the defendant company against the other defendants, now vested in the Receiver; and that the complainant has likwise a cause of action to recover the same moneys or property.

SECOND.

The purpose of the statute was to prevent the property or things of value from being put by its officers beyond the control of the corporation, in contemplation of its insolvency.

The defendant corporation, at the time of the supposed transfer, had no property interest whatever in the goods. As each consignment was made by the defendant corporation it drew on the defendant Albert J. Graeffe for its value. Graeffe accepted the drafts and the acceptances were passed by the defendant corporation into the hands of third persons; so that Graeffe became thereby the absolute owner of the goods; and having paid their value by his acceptances, became indebted therefor, not to the defendant corporation, but to the holders of these drafts. The amount of the goods on hand at the time of the nominal transfer was about $45,000 (pp. 49, 61, 68, 79, 84, 85), while the outstanding acceptances, not in the hands of the defendant corporation, but belonging to third parties, amounted to over $60,000 (pp. 53, 56, 61, 63, 64, 67, 79).

If Graeffe were not at liberty to sell the goods when and to whom he pleased and to receive and retain the moneys therefor and apply them as his own, how was it possible for him to have met these acceptances, upon which he was primarily liable, as they became due?

The contention of the complainant is that the goods, notwithstanding the drawing and acceptance of the drafts and the paying of the same away by the defendant corporation to its creditors or for cash, still left it the owner of the goods, by virtue of which, it could at any time have taken them from the defendant Graeffe and at the same time have left him liable to the holders of the outstanding acceptances.

The case of *Varnum against Hart*, 119 N. Y., 101, construes the statute, the alleged violation of which the complainant seeks to take advantage. In that case, besides the judgments which had been recovered in the usual way, after the failure of the defendants to answer, and the collection of which would have more than exhausted the property of the defendant corporation, another action was commenced, in which the defendant corporation aided such prosecuting creditor by an offer to allow judgment to be taken, which hastened his judgment and gave him an advantage over others not similarly favored. Complaint was made in the creditors' bill, that while the former judgments might be deemed to have been recovered without any aid of the officers of the defendant corporation, the latter creditor was advanced and preferred through their connivance in the offer of judgment. The Court of Appeals, while not passing upon that question, assumed the proposition to be sound for the purposes of the case, and held that inasmuch as the former judgments and executions were sufficient in amount to exhaust the property of the defendant, such action of the officers was apparently but a technical violation of the statute, and as nothing of value passed by or under it, there had been no violation of the law; the Court saying: "The valid executions had the prior lien and right, and they were of greater amount than the whole of the corporate property sold. The presence of the invalid execution in the hands of the Sheriff could work no harm."

Applying this principle to the case at bar: The goods were the property of the defendant Graeffe at the time, by virtue of a consignment to him and the drawing, acceptance and paying away of the bills of exchange in excess of the value of the goods. He had, also, as will appear hereafter, his factor's lien thereon for an amount exceeding their value; so that the nominal transfer, advantage of which the complainant seeks to

take here, passed no property and conferred no greater or better title upon Graeffe than he already had.

The resolution, then, of the Board of Directors of the defendant company on the 28th day of February, 1881, and the bill of sale given at that time, while apparently a violation of the statutes (Chap. 450, Laws of 1825, Sec. 6; 1 New York R. S, p. 603, copied on p. 23 of Appellant's Brief), in being in contemplation of insolvency, was, in fact, but a transfer of a valueless equity of redemption; or, in other words, a foreclosure of the defendant Graeffe's lien upon the goods in question, for his advances and acceptances.

It gave the defendant, Albert J. Graeffe, no greater control over the goods than he had previously had under his lien. Without the transfer, he could have sold the goods, and have applied the proceeds to the discharge of his lien, and it would have left the defendant company in the same position in which it now is, still his debtor in the sum of over $9,000 (pp. 69, 79).

It took nothing from the defendant company and gave the defendant, Albert J. Graeffe, no additional rights or powers. It was but in furtherance of the agreement made by operation of law at the beginning of their transactions; that he should have a lien and the right to enforce it. And this alleged transfer, and the effect of it, if at all necessary for the protection of the defendant, Albert J. Graeffe, related back to the time when the obligation was incurred.

Ex parte Kevan L. R., 9 Ch. App. Cas., 752.
Castle vs. Lewis, 78 N. Y., 131.
Harman vs. Fishar, 1 Cowper, 117.
Hunt vs. Mortimer, 10 B. C., 44.

THIRD.

Complainant has not exhausted its legal remedies, and the Court below sitting in equity, was without jurisdiction to grant the relief prayed for.

As to each other the State and the Federal Courts are foreign jurisdictions.

Davis vs. Bruns, 23 Hun, 648.
Tarbell vs. Griggs, 3 Paige, 207.
Claflin vs. McDermott, 20 Blatch., 522.
Tompkins vs. Purcell, 12 Hun, 662.

In giving national banks the right to sue or to be sued in the U. S. Courts it is not understood that any greater or different privileges are given to them that would be afforded to citizens of different States or to aliens. A citizen of any other State or an alien would be required, before filing his bill on the equity side, to have exhausted his remedies at law, and would not be allowed to proceed in equity, founded on a judgment recovered in a foreign jurisdiction.

U. S. R. S., Chap. 7, Sec. 629, Subdivisions 1st and 10th.

It may be said that the jurisdiction of the State Court, in which the remedy at law has been exhausted, is within the jurisdiction of the Court below, but the fact remains that their territorial jurisdiction is not co-extensive, and the Court will take judicial notice of the fact that the Circuit Court for the Southern District of New York had jurisdiction over a territory beyond the reach of the Sheriff of the City and County of New York. Such being the case, complainant's remedy at law within the territorial jurisdiction of that Court had not been exhausted.

It might be otherwise if the territorial jurisdiction of both the State and the Federal Court were identical.

FOURTH.

A factor has a lien upon the property of the principal in his possession for his commission, advances and expenses.

Willard's Eq., 124.
Kruger vs. Wilcox, 1 Amb., 252.
Bryce vs. Brooks, 26 Wend., 367.
U. S. vs. Villa Longa, 23 Wall., 35.
Ohio & M. R. R. vs. Kasson, 37 N. Y., 218.
Storey on Agency, section 34.
Whart. on Agency, section 766.
Winter vs. Coyt, 7 N. Y., 288.

I. The goods cannot be taken from the factor even by the principal until payment of the lien.

Nagle vs. McFeeters, 97 N. Y., 196.

II. The lien claimed and conceded exceeding in amount the value of the goods transferred and subject to it, equity will determine that the transfer complained of is to be deemed but an equitable foreclosure.

The lien at common law was at first a mere right to passive holding and retaining of the property of another until some claim thereon should be satisfied.

From this grew the right to enforce a lien by sale of the property, after due notice given to the owner to redeem and his failure to do so; the lienor being always at the risk of having to account for the value if the owner had not reasonable notice of the sale.

Marfield vs. Goodhue, 3 N. Y., 62.
Brown vs. McGraw, 14 Pet., 479.

He must first sell the goods before he can call upon his principal to pay any deficiency.

Gibson vs. Stanton, 9 N. Y., 476.
Motram vs. Mills, 3 Sandf., 189.

III. Where the right to sell the property in satisfaction of the lien was doubtful or inadequate, or there were other equities to be considered, courts of equity intervened and obtained jurisdiction, to the end that the property might be disposed of and the lien satisfied.

Vallette vs. White Water V. C. Co., 4 McLean (C. C.), 192.
Cairo, &c., R. R. Co. vs. Fackney, 78 Ill., 116.
Neate vs. Duke of Marlborough, 3 Myl. and Cr., 407, 415.
2 Story's Eq., section 1217.

IV. But in the case at bar the owner and the lienor came together, and avoiding the expense of judicial proceedings, either in law or in equity, and saving to themselves the losses usually incident to foreclosure, the property was put to the lienor for its full value, and the lien to that extent discharged.

Surely no equities were violated in such a course.

V. It is no answer to this to say that the principal might have expected that the lienor would take the proceeds and meet, as they became due, the outstanding obligations, upon which the lienor was primarily, and the principal secondarily, liable. There is no proof that such was the intention. That would not affect the validity of this foreclosure. The title passed and became legally and equitably vested so that the lienor could make good title to anyone, whether for the cash payment presently made or in discharge of a *bona fide* antecedent debt.

Suppose that after the action of the Board of

Directors the defendant Albert J. Graeffe had sold the property for the full market value in cash, would he not, under the circumstances, have been justified in taking the same cash, and with it discharging a *bona fide* indebtedness of his own ?

VI. Prior to the statute (Laws of N. Y., 1830, Chap. 179) it had been held that a factor might deliver possession of the goods of his principal to a third person as his own agent, with notice of and in order to preserve his lien, or pledge the same to the extent of his lien.

Urquhart vs. McIver, 4 Johns., 103.
McCombie vs. Davis, 7 East., 5.

But where, as in this case, the factor had, under the Act of 1830, not only actual possession of the property, but documentary evidence indicating actual ownership, a valid pledge or transfer might be made of the entire property.

" A factor so situated can sell or pledge the whole or " any part of the property, or give upon it any lien or " security for advances, and, in short, treat it as his own. " Entrusted with the disposing control, he can exercise " that control; and if he misappropriates the property or " its avails, his principal must suffer—not the person who " has dealt with the factor 'on the faith' of the position " in which the principal has placed him."

Cartwright vs. Wilmerding, 24 N. Y., 521, 530.

Chapter 179 of the Laws of New York, 1830, is as follows :

Section 1. " After this act shall take effect, any person in whose name any merchandise shall be shipped shall be deemed the true owner thereof so as to entitle the consignee of such merchandise to a lien thereon for any money advanced or negotiable security given by

such consignee to or for the use of the person in whose name such shipment shall have been made."

* * * * * *

Section 4. "Every person who shall hereafter accept or take any such merchandise in deposit from any such agent as security for any antecedent debt or demand shall not acquire thereby or enforce any right or interest in or to such merchandise or document other than was possessed or might have been enforced by such agent at the time of such deposit."

Section 5. "Nothing contained in the two last preceding sections of this act shall be construed to prevent the true owner of any merchandise so deposited from demanding or receiving the same, upon repayment of the money advanced, or on restoration of the security given on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same." * * *

As between the defendant company and the defendant Albert J. Graeffe, and all claiming under or through either of them, the Statutes of the State of New York must apply.

The citations on the part of the complainant were wholly outside of the State of New York.

FIFTH.

The complainant is in error when it claims that the lien of the defendant Albert J. Graeffe did not exceed $21,715.58.

Had that been so, the transfer in satisfaction of the lien would have been legal and valid; and the goods, after such transfer, could not be taken from the posses-

sion either of the defendant Albert J. Graeffe or from a third party. If a mistake had been made in determining the amount, and such mistake, if any, discovered after the transfer, the title would pass, and leave the defendant Albert J. Graeffe personally responsible to the defendant company for the amount of the error.

At the time of the transfer, as has been shown, the defendant Albert J. Graeffe claimed, and the defendant company conceded, a lien on the goods to the amount of about $60,000 (pp. 51, 56, 57).

A corporation may make an admission which will be evidence against it, and will serve as an estoppel in favor of any one acting on the faith of it.

O'Leary vs. The Board of Education, 93 N. Y., 1, 5.
Curnen vs. The Mayor, 79 N. Y., 511, 514.

The books of the defendant Albert J. Graeffe, produced in evidence by the complainant, kept in the ordinary course of his business, showed the balance on the 1st of February, 1881, in his favor to have been $50,411.61 (p. 78). Advances, commission and interest during the month of February, including a cash payment made as late as the 28th, aggregated $15,910.31, making together a total of $66,321.92. Besides the goods upon which he had his lien, and which were transferred in satisfaction of it, and which, for the purposes of this explanation, we will put in round numbers at the value of, say, $45,000, there seems to have been sold to other parties goods, either for cash or on credit, which were charged to Mr. Graeffe at about $10,000, making an aggregate of merchandise against him for the month of $55,892.46. A credit for $278.18 interest is entered; also for bills payable, draft No. 2193, $1,000, making a final total of $57,170.64; which, deducted from the debit side of the account, shows the defendant company to be still indebted to the defendant Albert J. Graeffe in the sum of $9,151.28 (p. 79).

It will be observed from this examination of the books that the only drafts charged against the defendant company are the $27,600.40 acceptances sent to the Mills Company and used by it, and the $30,000 proceeds of drafts which the defendant Albert J. Graeffe accepted and procured to be discounted, the proceeds of which were sent to the defendant company, making an aggregate of $57,600.40. This would go to indicate that there had been personal cash advances by the defendant Albert J. Graeffe to the defendant company, of about $9,000; the difference between the acceptances and the totals of $57,000 and $66,000 (p. 79).

The items aggregating $32,500 which were accommodation drafts of the defendant company to the defendant Albert J. Graeffe, are neither charged in the account on one side nor credit given on the other (p. 74).

Had they been charged on one side and credit given on the other, each side of the account would have been increased by the sum of $32,500, but the net balance would of course remain the same in favor of the defendant Albert J. Graeffe in about the sum of $66,000.

These accommodation acceptances, were not due at the time of the transfer, and have never been paid by the defendant company, so as to entitle it to a credit.

The Court below, in the opinion pronounced on the hearing, referring to these accommodation drafts, says: "The acceptances involved do not appear upon Graeffe's books in his account with the Mills Company" (p. 97).

The reason for that is quite apparent. As has been before suggested, the drafts drawn by the Mills Company, while in Graeffe's hands, had no validity. They became valid only by his acceptance of them and payment away before maturity to a *bona fide* holder for value. By this act Graeffe incurred no liability to the defendant corporation, but immediately became liable to the holders of the drafts. He could not become indebted to the defendant corporation by reason of them

until the defendant corporation should have taken the place of the holders by taking up these obligations, and then its rights would be, not that it had drawn the drafts, but that it had paid them and was the holder. This has not been done, and there has been no occasion and no reason for any credit to be given the Mills Company by Mr. Graeffe on his books for them.

The drafts in question having been drawn by the defendant corporation solely for the benefit and accommodation of Graeffe, it never became even secondarily liable upon them.

Bank of Yonkers vs. Patchin Bank, 13 N. Y., 309.

It is quite evident that there should be no deduction for the amount of the accommodation drafts in favor of the defendant corporation, or any one claiming through it; at least, until these accommodation drafts are taken up and surrendered, or offered to be surrendered to the defendant, Albert J. Graeffe.

SIXTH.

The defendant corporation was neither insolvent nor in contemplation of insolvency at the time of the transfer.

It was contingently liable only on the Graeffe acceptances, which were not then due. It owed but $77,421.31; and had assets, exclusive of the goods transferred, valued at $127,486.64 (pp. 93, 94).

Had the defendant company been insolvent at that time, such fact would not be conclusive evidence that the transfer complained of was in contemplation of insolvency.

which he held as security against them. Neither in its bill, nor upon the trial, has it tendered a return of these acceptances nor a satisfaction of the judgments recovered upon them. And had the defendant corporation been the complainant here, and sought to recover its goods (and complainant's position is no better than the defendant corporation's would have been), the defendant Albert J. Graeffe could have successfully resisted the taking from him of them, until an actual discharge of his obligation, by reason of these particular acceptances.

But assuming that in equity the acceptances may be deemed surrendered, and the defendant Albert J. Graeffe no longer held liable thereon; and the defendant Mary J. Graeffe, taking his position in respect to the goods, be asked to respond, on the theory that these obligations, to the extent of $8,000, have been surrendered and cancelled; still the difference between the defendant Albert J. Graeffe's liability on outstanding obligations, $54,215.58, less the $8,000, for these acceptances held by the complainant, would leave more than $45,000, upon which he is still liable, an amount in excess of the value of the goods.

NINTH.

The decree of the Circuit Court should be affirmed, with costs.

October, 1890.

ALEX. THAIN,
Counsel for Appellees, Mary J. Graeffe
and Wm. H. Garner.

FILED,
OCT 28 1890
JAMES H. McKENNEY,
CLERK.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

Supreme Court of the United States.

APPEAL FROM THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Between THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, Appellant,

AND

THE AMERICAN MILLS COMPANY, ALBERT J. GRAEFFE, WILLIAM H. GARNER, MARY J. GRAEFFE and WILLIAM H. BOWEN.

No. 62.
October Term, 1890.

BRIEF

of the Appellees, The American Mills Company, Albert J. Graeffe and William H. Bowen.

These appellees ask leave to submit their case on the brief and points submitted by Mr. Alexander Thain for the other appellees, and the opinions of Judge COXE, who tried the case below (pp. 95–98 of the Record), and pray that the decree below be affirmed.

Respectfully submitted,

SAMUEL W. BOWER,
Of Counsel for Appellees,
American Mills Company, Albert J. Graeffe and William H. Bowen.

[28615]